

Village of Wellington

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

**Darell Bowen, Mayor
Dr. Carmine A. Priore, Vice Mayor
Lizbeth Benacquisto, Councilwoman
Matt Willhite, Councilman
Howard K. Coates, Jr., Councilman**

**Wellington Community Center
12165 West Forest Hill Boulevard
Wellington, Florida**

**TUESDAY, APRIL 28, 2009
7:00 PM
FINAL AGENDA**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. INVOCATION**
Pastor Marjorie Weiss, St. Michael's Lutheran Church,
Wellington
- 4. APPROVAL OF AGENDA**
- 5. CONSENT AGENDA**
 - A. RESOLUTION R2009-33 (FLORIDA POWER & LIGHT STREET LIGHTING AGREEMENTS)**

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A STREET LIGHTING AGREEMENTS BETWEEN THE VILLAGE AND FLORIDA POWER & LIGHT FOR THE INSTALLATION AND

MODIFICATION OF STREET LIGHTING FACILITIES WITHIN THE VILLAGE OF WELLINGTON; AND PROVIDING AN EFFECTIVE DATE.

Approval of Florida Power & Light (FPL) Street Lighting Agreements.

B. RESOLUTION R2009-35 (CODE OF ETHICS POLICY AND EMPLOYEE ETHICS COMMITTEE)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, REVISING THE VILLAGE'S EMPLOYEE MANUAL BY REPEALING THE CODE OF ETHICS SUBSECTION AND ADOPTING A NEW CODE OF ETHICS SUBSECTION, CREATING AN EMPLOYEE ETHICS COMMITTEE; AND PROVIDING AN EFFECTIVE DATE

To implement an updated Ethics Policy and institute an Employee Ethics Committee.

C. AUTHORIZATION FOR THE VILLAGE MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE TOWN OF JUPITER FOR CONSULTING SERVICES

The Town of Jupiter seeks to have the Village of Wellington provide consulting services for the purposes of improving their use of the SunGard Public Sector software suite, implement automation of financial reporting (such as the CAFR, budget reports, budget preparation documents, etc.), implement new report writing software, and perform system use analysis' for several technology systems.

D. RESOLUTION R2009-36 (SUNGARD PUBLIC SECTOR SOFTWARE AS A SERVICE (SAAS) CONTRACT)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH SUNGUARD PUBLIC SECTOR, INC. TERMINATING THE EXISTING FACILITIES MANAGEMENT AGREEMENT BETWEEN THE PARTIES EFFECTIVE SEPTEMBER 30, 2009 AND AUTHORIZING THE EXECUTION OF A NEW SERVICE PROVIDER AGREEMENT EFFECTIVE OCTOBER 1, 2009; AND PROVIDING AN EFFECTIVE DATE

The Information Technology department is seeking to terminate the current facilities management and annual software maintenance agreements with SunGard Public Sector and move to a single Software as a Service (SaaS) agreement. This agreement will enable the Village to streamline its Information Technology department, ensure the SunGard Public Sector software systems remain current and readily accessible, and to reduce the annual operating budget by \$65,000 per year.

E. RESOLUTION R2009-34 (APPROVE SPECIAL PURCHASE OF ROYAL PALM TREES)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, DIRECTING THE VILLAGE STAFF TO DEVIATE FROM ITS NORMAL PURCHASING POLICY AND RELY ON TELEPHONE QUOTATIONS FOR THE PURCHASE OF CERTAIN TREES FOR \$90,007.02 FROM J.I.C. ENTERPRISES IN ORDER TO TAKE ADVANTAGE OF SAVINGS CAUSED BY J.I.C. ENTERPRISES NEED TO REMOVE TREES FROM A FLORIDA POWER & LIGHT RIGHT-OF-WAY BY THE END OF APRIL; AND PROVIDING AN EFFECTIVE DATE

Authorization from Council to exempt the purchase of Royal Palm trees from the normal competitive requirements of the Purchasing and Procurement Manual. The exemption would allow three hundred (300) trees to be purchased from J.I.C. Enterprises for a cost of \$90,007.02 (Avg.Cost/Tree \$300.02). Comparable pricing from two (2) other vendors is \$175,653.00 (Avg. Cost/Tree \$585.51) and \$185,748.00 (Avg. Cost/Tree \$619.16). Total savings to the Village is \$85,645.98. Funds to pay for the trees would be allocated from CIP projects on Forest Hill Boulevard, Greenview Shores, Village Park Second Entrance, and Pierson Road Median projects, as well as from the Landscape Department materials and supplies budget.

F. RESOLUTION R2009-32 (THIRD AMENDMENT TO THE AGREEMENT FOR LAW ENFORCEMENT SERVICES BETWEEN THE PALM BEACH COUNTY SHERIFF'S OFFICE AND THE VILLAGE OF WELLINGTON)

A RESOLUTION OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE THE THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICES AGREEMENT WITH PALM BEACH COUNTY SHERIFF'S OFFICE, FOR LAW ENFORCEMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Council is requested to approve the Third Amendment to the Law Enforcement Services Agreement.

6. PRESENTATIONS AND PROCLAMATIONS

7. PUBLIC HEARINGS

8. REGULAR AGENDA

A. PALMS WEST CHAMBER OF COMMERCE REQUEST FOR BANNERS AND A-FRAMES

The Palms West Chamber of Commerce is requesting permission to hang banners, and the use and display Village of Wellington A-Frames for the annual Taste of the West and Chocolate Lovers' Festival scheduled for June 4th at the South Florida Fairgrounds.

B. WELLINGTON CHAMBER OF COMMERCE REQUEST FOR INFORMATIONAL AND A-FRAME SIGNS

The Wellington Chamber of Commerce is requesting permission to use the Village's informational and A-Frame signs to advertise the 2009 Flavors event scheduled for May 8th at the International Polo Club.

C. CONSIDERATION OF LEASE WITH PBCC FOR K-PARK SITE

Staff seeks Council direction with respect to the acceptability of the terms and conditions of the proposed lease with Palm Beach Community College.

9. ATTORNEY'S REPORT

10. MANAGER'S REPORT & UPDATES

11. COUNCIL REPORTS

12. CLOSING COMMENTS

13. PUBLIC FORUM

14. ADJOURNMENT

NOTICE

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at this meeting, you will need a record of the proceedings, and you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (The above notice is required by State Law. Anyone desiring a verbatim transcript shall have the responsibility, at his own cost, to arrange for the transcript).

Pursuant to the provision of the Americans With Disabilities Act: any person requiring special accommodations to participate in these meetings, because of a disability or physical impairment, should contact the Village Manager's Office (561) 791-4000 at least five calendar days prior to the Hearing.

5. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-33 (FLORIDA POWER & LIGHT STREET LIGHTING AGREEMENTS)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A STREET LIGHTING AGREEMENTS BETWEEN THE VILLAGE AND FLORIDA POWER & LIGHT FOR THE INSTALLATION AND MODIFICATION OF STREET LIGHTING FACILITIES WITHIN THE VILLAGE OF WELLINGTON; AND PROVIDING AN EFFECTIVE DATE.

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Approval of Florida Power & Light (FPL) Street Lighting Agreements.

EXPLANATION: At the request of Village staff, Florida Power and Light (FPL) recently conducted an audit of the Village's street lighting accounts. Currently, the Village pays the electrical costs for a total of 1,314 street lights. As a result of the audit it was discovered that 37 lights may actually be in private and/or gated communities and therefore electrical service may not be the responsibility of the Village.

FPL is now requesting that the Village sign new street lighting agreements (attached) with the understanding that the Village intends to coordinate the transition of certain lights over to the Homeowners Associations and/or Management Companies.

The proposed agreements do not impact the current effective street lighting rate schedule. At the request of FPL, all accounts remain consistent with agreements currently in place including the number of accounts and the quantity of lights assigned to each account. In the event responsibility for some or all of the 37 lights transition to private and/or gated communities, the quantity of lights reflected in these agreements will be revised to accommodate the deletion(s).

FISCAL IMPACT: Funding is budgeted within Public Works – Roads Electric Streetlights (130-2020-541.43-10).

RECOMMENDATION: Staff recommends acceptance and approval of Florida Power and Light Street Lighting Agreements.

RESOLUTION NO. R2009-33

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A STREET LIGHTING AGREEMENTS BETWEEN THE VILLAGE AND FLORIDA POWER & LIGHT FOR THE INSTALLATION AND MODIFICATION OF STREET LIGHTING FACILITIES WITHIN THE VILLAGE OF WELLINGTON; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village has installed street lights within the Village's Rights of Way and is desirous of entering into a series of Street Lighting Agreements with Florida Power & Light for an initial term of 10 years with automatic renewals to provide electricity to the street lighting system along with any necessary additional installations and /or modifications to the system.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Village Council hereby approves the Street Lighting Agreements between the Village of Wellington and Florida Power & Light, attached hereto as composite Exhibit "A", and the Mayor and Village Clerk are authorized to execute the Agreements.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of April, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney



FPL Account Number: 97882-94404

FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Village of Wellington, (hereinafter called the Customer), requests on this day of January __, 2009, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) , located in Wellington, Palm Beach, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		
Fixture Rating (in Watts)	Fixture Type	# Installed
70	HPS	
100	HPS	
150	HPS	5
200	HPS	
250	HPS	
400	HPS	

<u>Lights Removed</u>		
Fixture Rating (in Lumens)	Fixture Type	# Removed

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
Concrete	5		
Wood			

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
1815 Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully) This streetlight agreement is based on results from the streetlight survey.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

- 8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer- requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
- 9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
- 10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
- 11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
- 12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
- 13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
- 14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
- 15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
- 16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Village of Wellington

FLORIDA POWER & LIGHT COMPANY

Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

By: _____
(Signature)

(Print or type name)

(Print or type name)

Title: _____

Title: _____



FPL Account Number: 08721-01290
FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Village of Wellington, (hereinafter called the Customer), requests on this day of January _____, 2009, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) , located in Wellington, Palm Beach, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		
Fixture Rating (in Watts)	Fixture Type	# Installed
70	HPS	269
100	HPS	563
150	HPS	21
200	HPS	279
250	HPS	
400	HPS	1

<u>Lights Removed</u>		
Fixture Rating (in Lumens)	Fixture Type	# Removed

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
Concrete	874		
Wood	2		

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
1815 Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully) This streetlight agreement is based on results from the streetlight survey.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Village of Wellington

FLORIDA POWER & LIGHT COMPANY

Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

By: _____
(Signature)

(Print or type name)

(Print or type name)

Title: _____

Title: _____



FPL Account Number: 57957-91184
FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

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(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		
Fixture Rating (in Watts)	Fixture Type	# Installed
70	HPS	
100	HPS	14
150	HPS	1
200	HPS	
250	HPS	
400	HPS	

<u>Lights Removed</u>		
Fixture Rating (in Lumens)	Fixture Type	# Removed

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
Concrete	15		
Wood			

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
1815 Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully) This streetlight agreement is based on results from the streetlight survey.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
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10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Village of Wellington

FLORIDA POWER & LIGHT COMPANY

Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

By: _____
(Signature)

(Print or type name)

(Print or type name)

Title: _____

Title: _____



FPL Account Number: 01656-40459
FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Village of Wellington, (hereinafter called the Customer), requests on this day of January __, 2009, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries), located in Wellington, Palm Beach, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		
Fixture Rating (in Watts)	Fixture Type	# Installed
70	HPS	
100	HPS	
150	HPS	
200	HPS	2
250	HPS	
400	HPS	

<u>Lights Removed</u>		
Fixture Rating (in Lumens)	Fixture Type	# Removed

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
Concrete			

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
1815 Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully) This streetlight agreement is based on results from the streetlight survey.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Village of Wellington

FLORIDA POWER & LIGHT COMPANY

Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

By: _____
(Signature)

(Print or type name)

(Print or type name)

Title: _____

Title: _____



FPL Account Number: 12383-77210
FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Village of Wellington, (hereinafter called the Customer), requests on this day of January ____, 2009, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries), located in Wellington, Palm Beach, Florida.
(city/county)

- (a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		
Fixture Rating (in Watts)	Fixture Type	# Installed
70	HPS	
100	HPS	
150	HPS	6
200	HPS	153
250	HPS	
400	HPS	

<u>Lights Removed</u>		
Fixture Rating (in Lumens)	Fixture Type	# Removed

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
Concrete	75		

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
1815 Feet Under Paving	Feet Under Paving

- (b) Modification to existing facilities other than described above (explain fully) This streetlight agreement is based on results from the streetlight survey.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Village of Wellington

FLORIDA POWER & LIGHT COMPANY

Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

By: _____
(Signature)

(Print or type name)

(Print or type name)

Title: _____

Title: _____



January 14, 2009

Village of Wellington
14000 GREENBRIAR BLVD
Wellington, Florida 33406

Re: BA# 08721-01290

To Whom It May Concern:

The following customer-owned light(s) are in the above account in the name of:
Village of Wellington.

<u>11</u>	<u>200</u>	<u>HPS</u>
(Number of Lights)	(Wattage)	(Type: HPS, MV, etc)

Billed as Energy Only.

Please confirm by signing below and returning this letter in the envelope provided.

Signed by: Authorized Customer Representative

Print Name

Sincerely,

Lighting Support Services

5. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-35 (CODE OF ETHICS POLICY AND EMPLOYEE ETHICS COMMITTEE)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, REVISING THE VILLAGE'S EMPLOYEE MANUAL BY REPEALING THE CODE OF ETHICS SUBSECTION AND ADOPTING A NEW CODE OF ETHICS SUBSECTION, CREATING AN EMPLOYEE ETHICS COMMITTEE; AND PROVIDING AN EFFECTIVE DATE

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: To implement an updated Ethics Policy and institute an Employee Ethics Committee.

EXPLANATION: The attached Ethics Policy revises the policy currently in the Employee Manual and includes changes specifically related to gifts. Additionally, the Employee Ethics Committee will be instituted to provide an advisory opinion when there is doubt related to the applicability of the Ethics Policy to a particular situation.

Resolution R2009-35 provides for the adoption of employee-related policy revisions such as those included in the Employee Manual and hereafter grants the Village Manager the authority to create or amend such policies as may be needed from time to time.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff recommends approval of the revised Ethics Policy and the approval of the Employee Ethics Committee. Additionally, staff recommends the Village Manager is granted the authority to implement and amend policies, such as those found in the Employee Manual as needed.

RESOLUTION NO. R2009-35

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, REVISING THE VILLAGE'S EMPLOYEE MANUAL BY REPEALING THE CODE OF ETHICS SUBSECTION AND ADOPTING A NEW CODE OF ETHICS SUBSECTION, CREATING AN EMPLOYEE ETHICS COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Manager recommends revisions to the Employee Manual's Code of Ethics provision including the creation of an Employee Ethics Committee from which employees could seek advice and counsel; and

WHEREAS, such revised Code of Ethics and Employee Ethics Committee provisions have been drafted and are attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Village Council repeals the existing Code of Ethics subsection of Section III Employment Policies of the Village of Wellington Employee Manual and adopts new subsection "Code of Ethics" and "Employee Ethics Committee" to be included in Section III Employment Policies of the Village of Wellington Employee Manual as such subsections are set forth in Exhibit "A" hereto.

SECTION 3. The Village Manager is authorized and directed to establish procedures and practices to implement these policies, which includes the use of manuals, memoranda, forms, applications, posters, bulletins, advertisements.

SECTION 4. A copy of these policies and all implementing procedures shall be maintained in the Village Clerk's Office.

SECTION 5. In the event of the amendment of any ordinance, rule, or law incorporated in these policies or upon which these provisions rely, these policies shall be deemed amended in conformance with those changes.

SECTION 6. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of April, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney

Code of Ethics

Employment with the Village of Wellington requires all employees to conduct themselves with integrity at all times; keeping in mind they are responsible to the citizens of Wellington. Employment with the Village subject to the requirements and guidelines of Chapter 112, Florida Statutes, and the guidelines for external standards and conduct found within Provision 2 of Article 3 Officers and Employees of Chapter Two “Administration” of the Village Code of Ordinances “Code of Ethics” of the Village of Wellington. These guidelines set forth general standards of conduct for public employees.

For our Employees...

The Village is committed to honesty, fairness, and providing a safe and healthy working environment that respects the dignity of every staff member.

For our Clients and Community...

The Village is committed to providing excellent and uncompromising service while providing information that is accurate, completely objective, relevant, timely and understandable.

For our Suppliers and Partners...

The Village is committed to transparency and openness that protects and ensures the proper use of Village assets.

In all our transactions...

The Village promises strict adherence with applicable government laws, rules and regulations, avoiding impropriety or the appearance of impropriety in the performance of duties. Compliance with the law does not compromise our entire ethical responsibility; rather it defines our minimal standard.

i

Avoiding a violation of the Code of Ethics requires that employees consider how an outside observer would view the situation; if it appears that the employee used their public position for private benefit or for the benefit of a friend or relative; or if it appears that the employee, a friend, or relative received special treatment from the Village as a result of the employee’s employment with the Village, the image of the employer and the Village are tarnished.

Therefore Village employees:

1. May not accept or solicit anything of value for their personal benefit from anyone who has business with or may be regulated by the Village of Wellington. This provision does not apply to gifts from or too fellow employees or officials of the Village of Wellington or relatives of the employee.
2. Are restricted from having other business relationships with the Village. No purchasing employee, or any employee who can authorize purchases or disbursements, may obtain goods or services for the Village from any company in which the employee or a relative of the employee has an interest. No employee may sell goods or services to the Village from a

business entity in which they own more than 5% interest. Village employees and officials, acting in a private capacity, are prohibited from renting, leasing, or selling any realty, goods, or services to their own agency.

3. May not use or attempt to use their official position to secure a special privilege or benefit for themselves or others.
4. May not have a contractual relationship with a company that is regulated by the Village or with a company that does business with the Village.
5. May not have an employment or contractual relationship that may create a continuing or frequently recurring conflict between their private interests and the performance of their public duties.
6. May not disclose or use information not available to members of the general public, and gained by reason of their employment, for their personal benefit or for the personal benefit of any other person or business entity.
7. Are prohibited from soliciting or knowingly accepting an honorarium. However, an employee may accept the payment of expenses related to an honorarium event provided that the expenses are disclosed.
8. Are required to file a "Statement of Financial Interest" if they fall within the categories of "state officers," "local officers/employees," "specified state employees," as well as candidates for elective local office.

This policy does not prohibit the employee from accepting a meal, food, or beverage paid by an individual when the meal is consumed in the presence of the payer and the value of the meal is less than \$50.00.

Employees should contact a member of Senior Management or a member of the Human Resources staff if they have any doubts or questions concerning the Code of Ethics. No reprisals will come from reporting suspected ethics violations unless it is determined the report was done in bad faith or maliciously. Employees found to have violated the Code of Ethics will be subject to disciplinary action, up to and including termination.

Employee Ethics Committee

The Village recognizes the need for its employees to be responsible to the citizens of Wellington and as such, employees must understand that employment shall not be used for personal gain or advantage. Additionally, the public must have confidence in the integrity of the Village's workforce. As such, the Village has implemented an Employee Ethics Committee to ensure the honesty and integrity of its employees. The Ethics Committee shall consist of members who will serve without additional compensation. Membership shall consist of 7 members to include the following:

- Assistant Village Managers (2)
- Risk Manager
- District 8 Commander
- Employee Representatives (3) – randomly selected from a pool of full- time regular employees classified in positions assigned to pay grade 130 or below

Committee Membership

- Employee Representatives will serve a term not to exceed one year
- The Deputy Village Clerk will serve as the Committee Secretary but shall not vote
- The Village Attorney shall furnish the Ethics Committee whatever legal assistance is necessary in the carrying out of its functions but who shall not vote
- A Chairperson will be selected from the pool of the entire committee
- The Chairperson will be elected by vote of all Committee members

When a Village employee has a doubt as to the applicability of a provision of this policy to a particular situation in which he/she may become involved or needs clarification of any terms used in the Village's Ethics Policy or ordinances or State statute, he/she may apply to the Ethics Committee for an advisory opinion and be guided by that opinion when given. The applicant shall have the opportunity to present his/her interpretation of the facts at issue and of the applicable provision(s) and/or terms to be clarified before such advisory decision is made. It is a prima facie evidence of intent to comply with this section when a person refers a matter to the Ethics Committee and abides by the advisory opinion.

The Ethics Committee may make recommendations with respect to amendments to the provisions of the Employee Ethics Committee or the Village's Ethics Policy at any time and for any reason.

5. C

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: Authorization for the Village Manager to Negotiate and Execute a Memorandum of Understanding with the Town of Jupiter for Consulting Services

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: The Town of Jupiter seeks to have the Village of Wellington provide consulting services for the purposes of improving their use of the SunGard Public Sector software suite, implement automation of financial reporting (such as the CAFR, budget reports, budget preparation documents, etc.), implement new report writing software, and perform system use analysis' for several technology systems.

EXPLANATION: The Town of Jupiter uses the same financial accounting software as the Village of Wellington. Jupiter has recognized the many exceptional ways with which the Wellington staff uses the system; particularly for data extraction, report creation, budget preparation and Purchasing Card integration. Jupiter is looking to expand upon their current use of the SunGard Public Sector software suite in order to streamline their budget process and CAFR reporting, institute the use of purchasing cards, and to become better overall users of the system. Jupiter has tried unsuccessfully to hire a staff member with the skills necessary to help them meet these goals. They have been unable to find an employee with the appropriate project management, financial background and most importantly, the SunGard background needed to successfully implement these items. Wellington finds itself in a position of having several staff members, in both the IT and finance departments, who can offer services to help Jupiter meet their needs; utilizing the expertise and tools Wellington has developed over the ten (10) years we have been working with the SunGard product. Jupiter and Wellington agree that a partnership would be beneficial to both parties and seek to work together in order accomplish these stated goals.

The Village Manager is seeking authorization to negotiate and enter into a Memorandum of Understanding with the Town of Jupiter that will provide the requested services to Jupiter while providing positive cash flow to the Village for the time the consultant is utilized. The primary benefit to the Village will be an offset against the costs of its current SunGuard contract for technology services.

The agreement will expire on September 30, 2009. At that time the parties will evaluate the benefits and costs of the relationship and determine whether a renewal is in the parties' mutual interest.

FISCAL IMPACT: The Town of Jupiter will pay a fee of \$6,000 per month for an agreed upon five (5) month period. The agreement may then be renewed on a monthly basis at the same \$6,000 per month fee for no more than seven (7) additional months, for a total of twelve (12) months.

RECOMMENDATION: Approval for the Village Manager to negotiate and execute a Memorandum of Understanding with the Town of Jupiter for consulting services, subject to approval of the terms and conditions of the agreement for form and legal sufficiency by the Village Attorney.

5. D

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-36 (SUNGARD PUBLIC SECTOR SOFTWARE AS A SERVICE (SAAS) CONTRACT)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH SUNGUARD PUBLIC SECTOR, INC. TERMINATING THE EXISTING FACILITIES MANAGEMENT AGREEMENT BETWEEN THE PARTIES EFFECTIVE SEPTEMBER 30, 2009 AND AUTHORIZING THE EXECUTION OF A NEW SERVICE PROVIDER AGREEMENT EFFECTIVE OCTOBER 1, 2009; AND PROVIDING AN EFFECTIVE DATE

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: The Information Technology department is seeking to terminate the current facilities management and annual software maintenance agreements with SunGard Public Sector and move to a single Software as a Service (SaaS) agreement. This agreement will enable the Village to streamline its Information Technology department, ensure the SunGard Public Sector software systems remain current and readily accessible, and to reduce the annual operating budget by \$65,000 per year.

EXPLANATION: In 1999, the Village entered into two agreements with SunGard (then H T E). One was for the purchase and annual licensing of SunGard's Public Sector software suite (which operates on an AS400 – currently maintained by the IT department). The second was a facilities management (outsourcing) agreement which contracted SunGard to provide an IT staff onsite for the Village. Both original agreements were for a period of five (5) years and took effect in June 2000. The licensing agreement carries with it an automatic annual renewal. The facilities management agreement was renewed for an additional five (5) years in 2005. The original intent of the facilities management agreement was to enable the Village to quickly build an IT department to help meet the tremendous burden being placed upon current Village staff as the size and scope of work within the Village was quickly expanding. Outsourcing the department, specifically to the vendor who would be providing our enterprise software, was seen as the most effective way to meet both the growing needs of the Village and to expertly implement a very complex software system. The goal was always to achieve a certain level of growth and maturity in the computing systems and infrastructure and then make the necessary changes in order to fully realize the function and value of the Village's Information Technology.

The Village now feels it has reached the time when it is more advantageous, both in expenses and expertise, to bring the entire department “in-house” in order to begin taking the next steps in our technology growth. This process started last year when the Village created the position of Chief Information Officer and hired Tom Amburgey from SunGard.

It is the desire of the Village to continue using the SunGard software, while creating the fully-functioning IT department. Several years ago, SunGard began offering their enterprise software as a service to clients. Through this process, SunGard owns all hardware and software and is responsible for maintaining the hardware, software, backups, disaster recovery, connectivity and security for the system. Wellington users will simply connect to the SunGard hardware in order to use the system. This allows for Wellington to continue using the software suite, while reducing costs in terms of hardware, maintenance, security, electricity, air-conditioning, and staff time.

In discussing our desires with SunGard, it was agreed that the best avenue moving forward would be for Wellington to cancel both existing agreements and migrate to the SaaS program. Staff has negotiated a five year agreement which will set the fees at \$240,000 for the first year. There will be a three (3) percent increase for the second year (\$247,200) and then the rate will stay flat for the remainder of the agreement. The Village will also be allowed to terminate both agreements early without penalty.

FISCAL IMPACT: The Information Technology department currently has operating expenses pertaining to staffing (internal staff and outsourced staff) and the SunGard Public Sector software suite (including hardware costs) of \$953,000 per year. The elimination of the facilities management (outsourcing) agreement and the current annual software maintenance agreement will give the Village a reduction of \$796,000 per year. There will be an additional reduction of \$10,000 annually in hardware related expenses, for a total annual reduction of \$806,000.

The Information Technology department will create five new positions to account for the termination of the facilities management agreement. The five new positions will be a Network Analyst, a Senior Business Analyst, two Business Analysts and a Network Technician. Along with the current position of CIO, it is estimated that the personnel expenses of the department will be no more than \$642,000 (dependent upon individual hires). The SaaS agreement will be budgeted at \$240,000. This will create total operating expenses (employees and SPS) of \$888,000. This budget will provide an overall operational savings of \$65,000 per year.

RECOMMENDATION: Staff recommends approval of the terminations of the current facilities management and software annual maintenance agreements and approval of the new SaaS agreement.

RESOLUTION NO. R2009-36

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH SUNGUARD PUBLIC SECTOR, INC. TERMINATING THE EXISTING FACILITIES MANAGEMENT AGREEMENT BETWEEN THE PARTIES EFFECTIVE SEPTEMBER 30, 2009 AND AUTHORIZING THE EXECUTION OF A NEW SERVICE PROVIDER AGREEMENT EFFECTIVE OCTOBER 1, 2009; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington entered into an agreement with the company now known as SunGuard Public Sector, Inc. (SunGuard) in 2000 for technology services and facilities management; and

WHEREAS, an amendment to the agreement with SunGuard was entered into in 2005 extending the term of the agreement until May 31, 2010; and

WHEREAS, SunGuard and the Village are desirous of terminating the existing agreement effective September 30, 2009 and entering into a new five (5) year agreement, which will realize the costs of the services provided by SunGuard under the terms of the agreement while allowing the Village to develop its own Information Technology Department.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Village Manager is authorized to terminate the existing agreement for facilities management and technology services with SunGuard Public Sector, Inc. effective September 30, 2009 and enter into a new five (5) year Application Service Provider Agreement with SunGuard Public Sector, Inc. beginning on October 1, 2009, to be substantially in the form of attached hereto as Exhibit "A" subject to approval of modifications to the agreement by the Village Attorney, in order to make the agreement comport with the intent of this resolution.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of April, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney

SUNGARD® PUBLIC SECTOR

Supplement to the SunGard Public Sector Inc. Application Service Provider Agreement Schedule A - Order Form

This Schedule A - Order Form is entered into under the terms and conditions of the SunGard Public Sector Inc. Application Service Provider Agreement of even date herewith (Agreement), between **SunGard Public Sector Inc. (SunGard Public Sector)** and **Englewood Water District, FL (Customer)**. Unless otherwise stated below, all terms and conditions as stated in the Agreement shall remain in effect.

Customer Name: Village of Wellington, FL

Agreement Number: WELL-090282-1

	Yes	No
Initial Order Form	X	
Replacement Order Form		X
Replaces Order Dated		

- Initial Term:** Begins October 1, 2009 and expires Sixty (60) months from the date the initial Monthly Access Fee is due under this Schedule A - Order Form.
- Application Groups:** Start-Up Fees and Monthly Access Fees.

	Applications and/or Services	Start-Up Fee	Monthly Access Fee
Existing Products (Currently Licensed)	GMBA w/ Extended Reporting - GM/ER, Purchasing/Inventory - PI, Payroll Personnel - PR, Human Resources - HR, Applicant Tracking - AT, Accounts Receivable - MR, Cash Receipts - CR, Asset Management II - A2, Fleet Management - FM, Work Orders/Facilities Management - WF, Procurement Card - PC, Land/Parcel Management - LX, Business Licenses - OL, Building Permits - BP, Code Enforcement - CE, Planning & Engineering - PZ, Customer Information Systems - CX, Contact Management - CZ, Parking Tickets - PT, Click2Gov Core Module - K1, Click2Gov CIS Module - K2, Click2Gov BP Module - K3, Click2Gov OL Module - K6, Click2Gov PZ Module - K7, Click2Gov PT Module - K8, Click2Gov Citizen Survey System - KG, Click2Gov Applicants - KA, Document Management Services.Net - DX, RecTrac Interface to CR - VI, RecTrac Interface to GM - VG, CIS Voice Response IVR - VC, BP Voice Response IVR - V1, Quatred Mobile Bar Code Interface - , QRep Analytics Base Component (5 users) - QA, QRep Cube License (GM, CX) - QB, QRep Web (Anonymous) - QW, QRep Catalogs: (GM,PI, PR, HR, AT, KA, MR, CR,A2, FM, WF, PC, LX, OL, BP, CE, PZ, CX, CZ, PT) - CJ	\$ 18,235.00	\$ 15,358.00
Third Party Products (Currently Licensed)	QRep - Admin (1 User) - CG Admin, QRep End User (19 User) - CG, GTG LGViewer (5 Users) - LV, LGAddress - LS	Included in Start-Up Fee	Included in Monthly Access Fee
Retrofit Maintenance	17 Objects	Included in Start-Up Fee	142.00
Hardware Allocation	Click2Gov hardware and software will be hosted and managed by SunGard Public Sector. VPN concentrator option to include management and configuration of VPN tunnel.	Included in Start-Up fee	Included in Monthly Access Fee
Services	Set-up, Implementation, HELP Card, Disaster Recovery Plan for SunGard Public Sector applications	Included in Start-Up Fee	Included in Monthly Access Fee
	Subtotal:	18,235.00	15,500.00
Concurrent Sessions - Monthly Access Fees			
30	ASP LPAR Environment	-	4,500.00
	System Total:	\$ 18,235.00	\$ 20,000.00

*Start-Up Fee is based on use of SunGard Public Sector's Standard ASP Implementation Methodology.

**Number of Concurrent Sessions listed above used in the calculation for the Monthly Access Fees. Changes to the number of Concurrent Sessions may impact the Monthly Access Fee.

3. Payment Terms:

Start-Up Fee: Due upon execution of this Order Form.

Monthly Access Fee: The initial Monthly Access Fee will be due October 1, 2009. Subsequent Monthly Access Fees will be due on the first of the month thereafter. Monthly Access Fees will be invoiced in advance on a monthly basis for a term of Sixty (60) months at the rates listed below.

Months 1 – 12 \$20,000.00 per month or \$240,000.00 per year;
Months 13 – 60 \$20,600.00 per month or \$247,200.00 per year;

Following the initial term, Services will be provided on a year-to-year basis provided the Customer exercises the option and pays the then current Monthly Access Fee.

Travel and Living Expenses: Travel and living expenses are in addition to the prices quoted above and will be invoiced as incurred and shall be governed by the SunGard Public Sector Corporate Travel and Expense Reimbursement Policy. Travel and living expenses actually incurred in prior months for which SunGard Public Sector is seeking reimbursement, shall also be invoiced monthly.

Note:

¹ Amounts for Months 13 through 60 include a onetime increase of 3% over the initial 12 month period. Following the 60th month, fees for subsequent 12 month terms are subject to change. Said change shall not be greater than five (5%) percent over the preceding 12 month term in accordance with Section 4.1 of the Agreement.

² Following the execution of this Schedule A-Order Form, any new Modification Retrofits provided by SunGard Public Sector will be added to the next annual renewal period, pursuant to Section 4 below.

³ Monthly Access Fees listed above are for the Applications and Services listed in this Schedule A-Order Form only

- 4. Modification Retrofits.** For each non-standard Application in library HTEMOD that was written by SunGard Public Sector or any Application that has had custom modifications performed by SunGard Public Sector at the Customer's request, SunGard Public Sector will perform all necessary programming to ensure that the program is compatible with each new software release, version, or program temporary fix made available by SunGard Public Sector. Fees for Modification Retrofits to be maintained are determined on an annual basis. This determination is based upon the number of modified objects prior to the beginning of each annualized ASP Term multiplied by the then current rate charged per object.
- 5. Hardware:** Customer is responsible for providing the DMS server. The DMS server is owned by Customer and shall reside at Customer's site for ease of management. The Click2Gov Server shall reside at SunGard Public Sector's Lake Mary office. The Click2Gov Server is owned by SunGard Public Sector and is not the property of the Customer.

The terms and conditions contained in this Schedule A – Order Form, including the prices, will be honored as set forth herein, provided this Schedule A – Order Form is fully executed by April 30, 2009.

All penalties associated with the early termination of Facilities Management Agreement, dated April 25, 2000, between the parties, will be waived provided Customer executes this Supplement no later than May 1, 2009. Further, execution of this Supplement will act as Customer's notification of its intent to terminate the Facilities Management Agreement effective September 30, 2009.

The attached Standards Sheet is applicable to the services ordered above.

VILLAGE OF WELLINGTON, FL

SUNGARD PUBLIC SECTOR INC.

Authorized Signature

Authorized Signature
Ronald E. Goodrew
Exec.VP, SunGard Public Sector Inc

Print Name & Title

Print Name & Title

Date

April 14, 2009
Date

SUNGARD® PUBLIC SECTOR

CLIENT SERVICES

ASP iSeries Standards Sheet **(Attachment to Schedule A – Order Form)**

1. Terminology

Term	Definition
Host Computer System	All hardware and software hosted by SunGard Public Sector Inc. on behalf of the customer. This includes the iSeries, Wintel servers and preferred 3 rd party software.
ISP	Internet Service Provider
System Administrator	The individual designated by SunGard Public Sector Inc. who is responsible for the operation of the Host Computer Systems
WinTel	Windows operating system using an Intel processor

2. System Availability

The scheduled hours of availability for the Host Computer Systems are 24 hours per day Monday – Saturday. The system is reserved for maintenance on Sundays from 12 a.m. – 5 p.m., customer local time. There are special considerations for software updates and emergency situations; please reference Sections 4.3 and 4.4 (Maintenance and Upgrades) for details.

3. System Backups

3.1. Daily System Backups

Daily data backups will begin at 12 a.m. (Customer local time) Monday through Friday. These backups consist of all SunGard Public Sector Inc. customer data. The system will be available during the daily backup.

3.2. Weekly System Backups

Weekly system backups will begin at 12 a.m. (Customer local time) on a day appropriate to the week being backed up. At this time a full system backup will be performed. These backups consist of all SunGard Public Sector Inc. customer data, program files, source files, and other necessary Customer data. In addition all AS400 system, Operating System, Security, and Data will also be backed up via a Restricted State backup. During this time access to the AS400 and its applications will not be available.

System backups will be rotated to an off-site storage facility on a daily basis.

3.3. Night Processing

Specified processor-intensive jobs, as determined by SunGard Public Sector Inc., may be required to be run during the night processing time frame of 8 p.m. to 11:59 p.m. to ensure that acceptable system performance standards are met. Examples of these jobs include such things as Utility Bill generation and Tax Notice generation. This is also to make sure the processes are finished before nightly backups occur.

3.4. Restores

Individual Customer restores will be performed on an as needed basis taking into consideration both Customer and Host Computer Systems functionality, availability, and necessity.

4. System Administration

SunGard Public Sector Inc. will provide for system administration of the Host Computer Systems (including the host iSeries system and associated host site hardware and communications infrastructure), including but not limited to:

4.1. System Monitoring

The Host Computer Systems will be monitored on a 24-hour basis through the use of automated monitoring software and/or hardware as selected by SunGard Public Sector Inc.. System operations to be monitored include:

- Subsystems - to ensure they are active, operational, and without pending errors messages.
- Job queues - to ensure they are active, operational, and attached to the correct subsystems.
- Critical system messages - Monitoring for hardware errors, system functionality errors, operating system errors, system integrity errors, etc
- System and Network Information - Samples of system and network information to be monitored include:
 - DASD (Disk storage)
 - Total utilization
 - RAID protection
 - Drive failures
 - Disk drive error rates
 - CPU Utilization
 - Total number of jobs in the system
 - Interactive response time
 - Communication line availability
 - Internet Connectivity from the Host Computer Systems to the Internet
 - Memory pool faults
 - Security violation attempts
 - System service starts and ends
 - Backup completion
 - UPS monitoring
 - Other pertinent system information as determined by SunGard Public Sector Inc.

4.2. System Maintenance

SunGard Public Sector Inc. will provide all necessary Host Computer Systems and network maintenance as deemed appropriate and necessary by the System Administrator and/or associated staff. Appropriate and necessary maintenance shall be determined through the use of standard iSeries and network monitoring and performance analysis tools.

4.3. Software Maintenance and Upgrades

Software maintenance and upgrades will be performed outside of standard business hours whenever possible.

Emergency situations will be handled on a case-by-case basis in such a manner as to provide the least possible disruption to overall system operations and availability without negatively affecting system stability and integrity.

All parties will have advanced notice of such upgrades and any emergency updates will have customer approval before being done.

4.3.1. IBM

IBM licensed program fixes and upgrades, including cumulative PTF's, shall be applied to the host iSeries system as required to maintain operating functionality and currency. These PTF's will be temporarily applied until their effectiveness is determined. Non-emergency IBM PTF applications will be performed outside of normal business hours.

4.3.2. Wintel

Wintel server service packs, patches and updates shall be applied as necessary to ensure integrity of the system(s), system data and associated operating environment. Patches deemed critical in nature by SunGard Public Sector Inc. or system/software vendors shall be applied as soon as possible to prevent system corruption, penetration, degradation etc.

4.3.3. SunGard Public Sector Inc. Applications

Upgrades and updates to SunGard Public Sector Inc. Applications on both the IBM iSeries and Wintel platforms will be performed on scheduled dates during the year.

4.4. Hardware Maintenance and Upgrades

Hardware maintenance and upgrades will be performed outside of standard business hours whenever possible.

Emergency situations will be handled on a case-by-case basis in such a manner as to cause the least possible disruption to overall system operations and availability without negatively affecting system stability and integrity.

The primary Customer contact will be notified, when possible, via the on file e-mail address, prior to hardware upgrades being performed.

4.5. System Security (Logical)

System security values will be set to provide for system integrity and data security as deemed appropriate by SunGard Public Sector Inc.. This will include such items as password length and makeup, change intervals, system security level, etc.

User profiles, with all object authority, will be limited to the standard system security profile and the System Administrator profile. Sign-on information for these two profiles will be secured with the Director of SunGard Public Sector Inc. or his designee and the System Administrator.

Customer user profiles will only have access to appropriate Customer data.

Security auditing will be enacted to provide for the ability to audit security violations, changes, etc., with periodic system security reviews conducted by SunGard Public Sector Inc..

Host site security will include implementation of an industry standard firewall, secure sockets layer, virtual private networks, IP address translation, and/or a combination thereof.

4.6. Non-Preferred Third Party Software

SunGard Public Sector Inc. has partnered with a number of third party vendors for purposes such as time & attendance, form printing, mapping, etc. For any non-preferred third party vendors, SunGard Public Sector Inc. will be responsible for the following:

- Initial loading of software
- Periodic upgrades/service packs
- Technical support for related iSeries issues

Exclusions: SunGard Public Sector Inc. does not support the user interface for non-preferred third party software. Troubleshooting will be performed by the customer and third party.

5. Hardware Requirements

The following are minimum hardware requirements to enable Customer to access the host site iSeries system. These requirements do not take into account any local any network configuration or requirements, which are the responsibility of Customer.

5.1. Personal Computers

Each personal computer that will access the ASP environment should achieve the following minimum hardware requirements for access:

- Pentium 4 or greater processor
- 2 GB storage
- 1 GB RAM (Increasing RAM will help increase system performance)
- Properly configured network interface card
- Microsoft Windows 2000 Pro (SP4 or higher) or XP Professional Edition with all SP's installed
- Microsoft Internet Explorer 6.0 or higher
- Sun Java 1.6
- Screen resolution 1024 x 768 or better
- Monitor, mouse and keyboard
- IBM iSeries Access for Windows v5r4 (This version can be provided to you by SunGard PS) with the latest available Service Pack.

SunGard Public Sector Inc. will not support any hardware that does not meet the minimum requirements

5.2. Printers

Type	Supported
Local (PC attached)	<p>Must be IBM certified.</p> <p>Microsoft Certified Printers: https://winqual.microsoft.com/HCL/ProductList.aspx?m=x&q=d&cid=900&f=86d</p> <p>IBM Certified Printers: http://www-912.ibm.com/s_dir/slkbase.NSF/0888cc5d18fceca58625680b005dc690/b44a2cf4ba778d83862568250053649f?OpenDocument</p>
Network	<p>Most printers with an available Ethernet connection and that are part of the approved IBM Certified Printer list can be used in the ASP environment. ***NOTE*** All-in-One Printer/Fax/Copier machines are not recommended.</p>
Twinax	<p>Any existing client Twinax printer that needs to be used in the ASP environment will require that a BOSANOVA e-Twinax controller be purchased by the client for network printing to be successful.</p> <p>http://www.bosanova.net/twinaxcontroller/index.html</p>

All others	Other printers will be evaluated on a case-by-case basis for compatibility with the ASP environment.

There are 2 options to deal with printing in the ASP environment:

Option 1: Utilize local print sessions that are configured and run via IBM iSeries Access for Windows. They can print to any networked, shared or locally attached printer that the Windows machine they are run on can see.

These sessions are easy to setup, however these sessions must be signed in and running for printing to work.

Some clients run all print sessions on a dedicated machine for ease of management. However, any non-shared locally attached printer, including Cash Receipts printers, must be run directly on the machine to which the printers are attached.

Option 2: Print directly via TCP/IP. In this setup the client will provide a unique static Public IP Address for each printer they want to print in this manner.

These are generally high traffic printers that customers do not want to be run on a print session. Also, any IPDS printing **MUST** be setup as an IP printer.

Option 2.1: Print directly via TCP/IP, but utilizing just one unique static Public IP Address. Each configured printer will use the same IP address, but a different port to print to. The clients firewall will then utilize port forwarding to direct the traffic to the correct printer.

Most clients utilize a combination of these methods. It is a customer's internal decision based on available Public IP addresses, current infrastructure and other needs.

We can work with any of these methods.

5.3. Recommended Customer Connectivity

Internet bandwidth is determined by the customer. It is based on Saturation level: a combination of connection speed, number of users on the system, size of files being accessed over the internet, etc. SunGard Public Sector Inc. strongly requires the following minimum setup:

- Minimum 1.5 MB internet connection (T1 or other telecom provided service is preferred over cable or DSL) Responsiveness is directly affected by connectivity selected.
- For clients who require site to site VPN, we require that the client have a Cisco branded VPN enabled device on their site.
- Recommended redundant internet connection in case the primary connection goes down.
- Dial up and wireless connections are **not supported**.

5.4. Recommended Customer Hardware

An industry standard firewall used to protect the customer's internal network is required for connectivity into the ASP network.

6. Performance Analysis of Customer's Current SunGard Public Sector Inc. Environment

A Customer's current environment will be reviewed prior to the ASP transition. Ideally Customers will transition to ASP on the latest version of SunGard Public Sector Inc. code. If a Customer is not on the latest version of SunGard Public Sector Inc. code, the current environment will be reviewed to determine if it can handle an upgrade before transitioning to ASP.

Items reviewed include: Current iSeries OS version, available disk space, current processing power, and current SunGard Public Sector Inc. version.

7. Host Site Performance

Performance monitoring and tuning will be performed as necessary to maintain an average in network interactive response time of 2.0 seconds or less when measured over a 1-hour period during normal business hours. "In network" is defined as any point between which the data packet enters the SunGard Public Sector Inc. environment and subsequently departs the SunGard Public Sector Inc. environment. Any point of communications outside of the SunGard Public Sector Inc. protected network environment, including DMZ, shall be deemed as "out of network."

iSeries, Wintel server and associated network infrastructure performance monitoring will be conducted on a regular basis. Monitoring shall be done during (no less than) four randomly selected one-hour periods within each calendar month. A summary of the performance statistics shall be made available for Customer review upon Customer request, including available predictive performance data where available.

SunGard Public Sector Inc. is not responsible for Internet connectivity and/or performance outside the internal SunGard Public Sector Inc. host site infrastructure.

8. Standard Application Support

SunGard Public Sector Inc. provides standard Application Support 24 hours a day, 365 days per year.

The toll-free support line is 1-800-695-6915 and the email address is asptechsuppt@hteinc.com.

9. System Hardware Support

Host site technical hardware and host operating system support shall be provided 24hours a day, 365 days per year. This includes support for technical issues related to Host Computer Systems access, hardware operations, and Host Computer Systems functionality.

SunGard Public Sector Inc. is not responsible for Customer hardware, non-SunGard Public Sector Inc. related software, Internet access, and/or connectivity issues. SunGard Public Sector Inc. will provide guidance to Customer in obtaining technical support for on-site hardware and connectivity issues.

SunGard Public Sector Inc. Application Service Provider Agreement

Effective Date (copy from signature page): _____

CUSTOMER NAME AND ADDRESS:

Village of Wellington
14000 Greenbriar Blvd.
Wellington, FL 33414

(Customer named above is hereinafter referred to as "Customer")

This Application Service Provider Agreement (the "Agreement"), is made and entered into by and between SunGard Public Sector Inc. ("SunGard Public Sector") and Customer on the day and year written following the execution hereof by SunGard Public Sector.

SunGard Public Sector and Customer agree that all services to be provided by SunGard Public Sector to Customer hereunder shall be furnished only under the terms and conditions of this Agreement and any "Schedule A - Order Form". The terms of this Agreement and any "Schedule A - Order Form" shall control notwithstanding any contrary provision of any purchase order used by Customer to effect the furnishing of any software or services by SunGard Public Sector to Customer.

1 Definition of Terms. As used herein:

- 1.1. **"Application(s)"** means the software system(s) to which Customer has requested access and paid therefor, listed on Schedule A - Order Form, including, but not limited to, all computer programs and related documentation, and any modifications thereto.
- 1.2. **"Conversion"** means the process by which Customer data is transformed to a usable SunGard Public Sector operational format. Conversion is an optional, not mandatory, service offered by SunGard Public Sector.
- 1.3. **"Effective Date"** means the date on which SunGard Public Sector executes this Agreement.
- 1.4. **"Host Computer Systems"** means SunGard Public Sector's hardware and software, located on SunGard Public Sector's premises, which is maintained and supported by SunGard Public Sector and utilized to provide the Access services hereunder.
- 1.5. **"Implementation"** means the processes by which Customer prepares Customer's operating procedures and personnel for transition to the Applications. Customer is primarily responsible for the preparation of its personnel and procedures, assisted by SunGard Public Sector as provided for herein. Implementation is a part of Start-Up Assistance.
- 1.6. **"Schedule A - Order Form"** means an attachment to this Agreement, which is a supplement to this Agreement for all purposes. Unless otherwise stated in any Schedule A - Order Form, all terms and conditions stated in this Agreement shall remain in effect.
- 1.7. **"Standards Sheet"** means an attachment to Schedule A - Order Form, which provides the most current information supplemental to this Agreement, such as hours of operation and support and Customer hardware requirements.
- 1.8. **"Start-Up Assistance"** means the combination of Implementation and Training services.
- 1.9. **"Training"** means the classes held by SunGard Public Sector to instruct Customer in the use of the Applications. Training is a part of Start-Up Assistance.

2. Access Services and Start-Up Assistance. SunGard Public Sector agrees to provide access to the Applications (hereafter referred to as "Access") requested by Customer on Schedule A - Order Form (or any supplemental or replacement Schedule A) for the number of terminals indicated so long as Customer is current in its payment obligations hereunder. Customer agrees to pay the fees for Access ("Access Fees") as provided on Schedule A - Order Form. Customer agrees that Customer's Access to the Applications shall be for Customer's sole use and not for any third party.

- 2.1. **Hours of Operation.** SunGard Public Sector shall publish its hours of operation on the Standards Sheet and shall keep Customer apprised of any changes thereto.
- 2.2. **Improvements and Changes.** SunGard Public Sector will install upgrades, new software releases and enhancements, error corrections, upgrades to third party operating system software, and upgrades to hardware, as necessary, for the Host Computer Systems.
- 2.3. **Start-Up Assistance.** SunGard Public Sector will provide Start-Up Assistance to Customer and Customer agrees to pay to SunGard Public Sector the Start-Up Fees as provided on Schedule A - Order Form. SunGard Public Sector's most current information with regard to Start-Up Assistance is published on SunGard Public Sector's Standards Sheet. Customer agrees to reimburse SunGard Public Sector for actual, reasonable travel and living incurred by or on behalf of SunGard Public Sector and its personnel in furnishing the Start-Up Assistance. Any such travel and living expenses shall be billed by SunGard Public Sector to Customer on a monthly basis and governed by the SunGard Public Sector Travel Policy.
- 2.4. **Optional Conversion Services.** At Customer's option, SunGard Public Sector will provide Conversion services. If Customer elects Conversion services, Customer shall provide data to SunGard Public Sector in a compatible format acceptable to SunGard Public Sector, and on media specified by SunGard Public Sector.

3 Term of Agreement. This Agreement is effective on the Effective Date. The initial term of this Agreement ("Initial Term") shall begin on the Effective Date and shall continue for the period stated on the Schedule A - Order Form, executed on even date herewith, beginning after the date the initial Monthly Access Fee is due under that certain Schedule A - Order Form executed on even date herewith.

4. Charges for Services.

- 4.1. Customer agrees to pay SunGard Public Sector Access and Start-Up Fees in accordance with Schedule A - Order Form. No more frequently than once per year, SunGard Public Sector shall have the right to adjust the Monthly Access Fees. For the Initial Term of this Agreement only, any increase in Monthly Access Fees shall be as stated on the Schedule A - Order Form, executed on even date herewith. At the end of the Initial Term, Services will be provided on a year-to-year basis provided the Customer exercises the option and pays the then current Monthly Access Fee. Increases in the Monthly Access Fees for subsequent periods shall be limited to no more than five (5%) percent when compared to the preceding year's fees. SunGard Public Sector may adjust other fees at any time.
Travel and living expenses actually incurred in prior months for which SunGard Public Sector is seeking reimbursement shall be invoiced monthly.

4.2. Amounts payable to SunGard Public Sector hereunder are payable in full without deduction, or set off, and are net of all sales, use or other taxes or duties. Customer shall duly and timely pay all taxes and duties, however designated, levied or based upon amounts payable to SunGard Public Sector hereunder (exclusive of United States Federal, state or local taxes based upon the net income of SunGard Public Sector). Customer agrees to indemnify and hold SunGard Public Sector harmless from any such taxes or duties which any federal, state or local taxing authority requires SunGard Public Sector to pay on Customer's behalf. It shall be Customer's obligation after payment by Customer to challenge the applicability of any tax if it so desires.

4.3. Customer shall pay for any data communications telephone services. If Customer requires special telephone line configurations due to unique equipment or data requirements, SunGard Public Sector reserves the right to charge for analysis and design of such special configurations.

4.4. SunGard Public Sector may, after having provided Customer with ten (10) days advance written notice, deny Access to Customer until all required payments due to SunGard Public Sector are received. The provisions of this Subsection 4.4 shall not operate as a waiver of any other remedies SunGard Public Sector may have.

5. **SunGard Public Sector's Obligations.** To assist Customer in accessing and using the Applications hereunder, SunGard Public Sector will:

5.1. provide all equipment, software, including changes, updates, and modifications thereto, and services necessary for operation and maintenance of SunGard Public Sector's Host Computer Systems;

5.2. provide efficient communication accessibility to the Host Computer Systems;

5.3. provide information regarding data back-up procedures, security, and other functions as reasonably requested by Customer;

5.4. operate and maintain the Applications and allow Customer access and use thereof. If third party software is included in or with the Applications, SunGard Public Sector will identify separate access or use restrictions or additional payment obligations associated therewith in Schedule A;

5.5. provide Start-Up Assistance described in Schedule A pursuant to Section 2 hereof;

5.6. offer Conversion services;

5.7. provide Application support and system support; and

5.8. publish system availability and support hours as well as host targeted response time.

6. **Customer's Obligations.** In order to enable SunGard Public Sector to perform its obligations hereunder, and as a condition precedent to SunGard Public Sector's obligations to perform hereunder, Customer shall:

6.1. within ten (10) days following the execution of this Agreement, designate a primary and a secondary contact, including telephone numbers and e-mail addresses;

6.2. exercise all due diligence in the performance of its obligations hereunder in connection with the Start-Up activities and subsequent access to and use of the Applications;

6.3. develop and implement proper audit controls, balancing procedures, operation methods and sufficient procedures to satisfy its requirements for data security, accuracy of input, and verification of output, including security access control for Customer's users of the Applications; and

6.4. adhere to hardware and communications requirements as published in the Standards Sheet;

6.5. in the course of Customer's daily operations, input data, perform balancing activities, generate reports, maintain data integrity; and be responsible for ensuring the input data is accurate and meets the standard specifications provided by SunGard Public Sector for such data;

6.6. maintain documents of original entry, source data and other backup media sufficient for file and input data re-creation in order to mitigate against the possibility of loss of input data and Customer data maintained by SunGard Public Sector;

6.7. use standard forms as required by SunGard Public Sector; and

6.8. provide for Internet connectivity.

7. **Representations, Warranties and Limitation of Liability.**

7.1. SunGard Public Sector represents that it is the owner of all Applications used in the performance of services hereunder, or is an authorized licensee with the right to engage in the delivery of such services, and such software or licenses thereto have been lawfully acquired by SunGard Public Sector.

7.2. SunGard Public Sector warrants that the Application(s) will perform in substantial compliance with its then current documentation. SunGard Public Sector warrants that in the provision of services hereunder, SunGard Public Sector will use employees, agents or contractors who are adequately trained and who possess the requisite skills and professional knowledge to provide assistance in utilizing the Applications.

7.3. SunGard Public Sector assumes no liability for any hardware or other third party products beyond manufacturers' warranty specified in the supplemental Schedule A-Order Form(s). Customer acknowledges that these products were selected by Customer to support features desired by Customer, and that they are included in the Agreement solely for that purpose.

7.4. In the event an Application is found to not substantially conform to its then-current documentation, Customer shall so advise SunGard Public Sector and SunGard Public Sector shall diligently pursue resolution of the discrepancy between the Application and its documentation.

7.5. IN NO EVENT SHALL SUNGARD PUBLIC SECTOR BE LIABLE TO CUSTOMER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS AGREEMENT. In no event shall SunGard Public Sector be liable to Customer for other damages arising under this Agreement unless such damages result from intentional misconduct or gross negligence on the part of SunGard Public Sector's officers or employees, in which event SunGard Public Sector's aggregate liability under the Agreement will be limited to the lesser of either (a) actual damages resulting directly from such conduct, or (b) the amount of Access Fees actually paid to SunGard Public Sector by Customer hereunder during the three (3) months immediately preceding the month in which the liability accrued.

7.6. THE PROVISIONS HEREOF ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED AND WHETHER OF MERCHANTABILITY, FITNESS OR OTHERWISE. THE REMEDIES HEREIN CONTAINED ARE EXCLUSIVE AND CUSTOMER WAIVES ALL OTHER REMEDIES.

8. **Confidentiality of Customer's Information.**

8.1. SunGard Public Sector acknowledges that Customer regards as confidential and as a proprietary asset any information or materials that come to the attention of SunGard Public Sector by reason of (a) the presence of SunGard Public Sector's agents, employees, or representatives at Customer's site, or (b) SunGard Public Sector furnishing services to Customer in connection with this Agreement (such information, materials, and records collectively being referred to as "Customer's Confidential or Proprietary Information").

8.2. SunGard Public Sector agrees to safeguard Customer's Confidential or Proprietary Information by holding it in strict confidence, disclosing it only to those employees, agents or contractors who have a need to know in order to provide Access as agreed upon. In the event that a subpoena or other legal process that in any way concerns Customer's Confidential and Proprietary Information is served upon SunGard Public Sector, then SunGard Public Sector agrees to notify Customer in the most expeditious fashion possible following receipt of such subpoena or other legal process, and SunGard Public Sector will reasonably cooperate with Customer, as requested by Customer, to contest the legal validity of such subpoena or other legal process (provided that Customer agrees to pay any expense SunGard Public Sector incurs in so doing).

- 8.3. SunGard Public Sector agrees to take all reasonable steps to prevent the disclosure, publication or dissemination of Customer's Confidential or Proprietary Information to any other person or entity, except where and to the extent specifically required by law
- 8.4. The provisions of this Section shall survive termination of this Agreement.

9. **SunGard Public Sector's Confidential Information.** Except as otherwise permitted under this Agreement, Customer will not knowingly disclose to any third party, or make any use of the SunGard Public Sector Confidential Information, except as required under Florida Statutes 119.01. Customer will use at least the same standard of care to maintain the confidentiality of SunGard Public Sector's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance.

10. **Security of Customer's Data; Access to SunGard Public Sector's Facility.** SunGard Public Sector will provide data security procedures which will include backup of all magnetically stored data kept or processed for Customer using the Applications, in a reasonable manner determined by SunGard Public Sector in keeping with generally accepted industry practices. Upon reasonable notice and during regular business hours, Customer may request admission to SunGard Public Sector's facility. SunGard Public Sector will not unreasonably refuse such access. Any non-SunGard Public Sector personnel who are granted access to SunGard Public Sector's facility shall comply with the physical security procedures instituted by SunGard Public Sector.

11. **Credit Toward In-house Licensing.** As used in this Paragraph 10, "In-house Licensing" means procuring through SunGard Public Sector's standard license agreement, the right for Customer to run a copy of the Applications that are owned by SunGard Public Sector for Customer's use only, on hardware owned or leased by Customer at a facility which is owned or controlled by Customer. In the event Customer desires to run the Applications owned by SunGard Public Sector in-house (and has not previously procured a license for such in-house use), SunGard Public Sector will discount Customer's in-house licensing fees for the Applications owned by SunGard Public Sector by an amount equal to one percent (1%) of the licensing fees for each month Customer uses Access services, up to a maximum discount of sixty percent (60%). In order to qualify for said credit, Customer must not be in breach hereof, must have provided termination notice pursuant to the terms of this Agreement, must enter into SunGard Public Sector's standard license agreement, and must have paid all fees required to be paid to SunGard Public Sector. Maintenance and support services for the Applications that are owned by SunGard Public Sector will be available to Customer (and are recommended by SunGard Public Sector) under the terms of SunGard Public Sector's standard maintenance agreement. In the event SunGard Public Sector terminates this Agreement pursuant to Section 16.3 hereof, SunGard Public Sector shall provide the Applications owned by SunGard Public Sector to Customer for In-house Licensing at no additional charge for license fees, provided however that Customer enters into SunGard Public Sector's standard license agreement; Customer pays any fees required to be paid to SunGard Public Sector under this Agreement; and Customer is not in breach of this Agreement.

12. **Contingency Planning.** The parties' responsibilities with respect to contingency planning will be as follows:

- 12.1. SunGard Public Sector will develop, maintain and, as necessary in the event of a disaster, execute a disaster recovery plan (the "SunGard SunGard Public Sector Plan") for SunGard Public Sector's hardware and Applications
- 12.2. SunGard Public Sector will provide to Customer such information as may be reasonably required for Customer to assure that Customer's disaster recovery plan is compatible with the SunGard Public Sector Plan.
- 12.3. Each party will be responsible for the training of its own personnel as required in connection with all applicable contingency planning activities.

13. **Record Retention.** It is Customer's sole responsibility to ensure that its records and data meet its retention requirements. SunGard Public Sector will provide, as a standard, record retention for a period of three (3) years. If Customer requests, SunGard Public Sector will provide longer record retention to Customer at SunGard Public Sector's then-current fees for such service.

14. **Customer Insurance Responsibility.** If Customer desires to obtain insurance protection against any losses incurred due to loss of input data during transmission or delivery or from errors resulting from defects in, or malfunctions of, the mechanical or electronic equipment used by Customer, Customer may do so at Customer's expense and SunGard Public Sector agrees to cooperate with Customer in obtaining such insurance.

15. **Intellectual Property.**

15.1. All computer programs, including the Applications, related documentation, written procedures, copies of transcripts, and similar items are proprietary to and shall be considered trade secrets and confidential information of SunGard Public Sector or SunGard Public Sector's vendors. Customer agrees that it will not disclose to any third party at any time (either during or after termination of this Agreement) any trade secrets or any other secrets or confidential information learned by Customer in connection with this Agreement. All documentation shall be returned to SunGard Public Sector upon termination of this Agreement. All original input data items remain the property of Customer and will be returned pursuant to Customer's instructions, so long as Customer is not in breach of this Agreement. Customer shall retain or destroy all original input documentation and other documentation in accordance with its own procedures.

15.2. The provisions of this Section shall survive termination of this Agreement.

16. **Termination.**

16.1. Further Customer may terminate this Agreement for cause in the event that SunGard Public Sector materially or repeatedly defaults in the performance of any of its duties and obligations under this Agreement, subject to the following: (i) Customer shall provide written notice to SunGard Public Sector of its intent to terminate this Agreement, specifying in detail the cause for the default (hereinafter a "Material Default Notice"); (ii) upon receipt of a Material Default Notice, SunGard Public Sector shall promptly commence curing the specified default (or demonstrate that the default did not occur), provided that the period of time to cure the default (the "Cure Period") shall not exceed ninety (90) calendar days, if the cause cannot reasonably be cured within the aforesaid Cure Period, the parties may extend the cure period by mutually agreeing upon a reasonable plan and program for curing the cause; (iii) if the cause is not cured within the prescribed or agreed upon Cure Period, Customer party may then immediately terminate this Agreement by providing a written notice to the other, stating the cause for termination, and such notice shall not require a cure period.

16.2. **Non-Appropriation of Funds.** Customer represents and warrants to SunGard Public Sector that Customer shall endeavor to encumber sufficient funds to pay SunGard Public Sector all Start-Up and Monthly Access Fees specified in the Schedule A – Order Form. Further, Customer covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. If, despite Customer's efforts, sufficient funds are not appropriated and budgeted in any fiscal period for payments due under the Agreement, then Customer will immediately notify SunGard Public Sector of such occurrence and SunGard Public Sector will notify Customer that SunGard Public Sector's obligation to provide Customer with services, and Customer's obligation to obtain services from SunGard Public Sector, will expire effective on the last day of the fiscal period for which appropriations were received.

16.3 Customer will additionally have the right to terminate this Agreement for convenience, by providing SunGard Public Sector with written notice of such termination for convenience at least ninety (90) days prior to the effective date of such termination for convenience. Provided as a strict condition of such right of termination for convenience, Customer must first remit to SunGard Public Sector payment in full of all fees for services rendered by SunGard Public Sector through the date of termination.

16.4 If after any termination or expiration of this Agreement Customer converts to a different vendor's applications, SunGard Public Sector will provide, upon payment of SunGard Public Sector's then-current standard deconversion fee, reasonable assistance and documentation for such deconversion in order to assist Customer in removing its information and placing said information in SunGard Public Sector's standard format for input to the other vendor's applications. In the event Customer requests a non-standard deconversion, SunGard Public Sector shall be entitled to receive compensation for consultation, software and documentation provided to assist in the deconversion on a time and materials basis at the standard prevailing rate then charged by SunGard Public Sector for such services.

17. **Choice of Law/Dispute Resolution.** This Agreement shall be governed by laws of the State of Florida. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other. Each party hereto agrees to submit to the personal jurisdiction and venue of the state and/or federal courts in or for Palm Beach County, Florida for resolution of all disputes in connection with this Agreement.

18. **Notices.** Any notice, request, demand, or other communication required or permitted hereunder will be given in writing, communication charges prepaid, to the party to be notified. All communications will be deemed given when received. The addresses for the parties for the purposes of such communication are:

If to Customer:

To the address shown on Page 1 of this Agreement

If to SunGard Public Sector:

SunGard Public Sector Inc
1000 Business Center Drive
Lake Mary, Florida 32746
ATTENTION: Contracts/Legal Counsel

A party may change its address only upon written notice to the other party in which case this Agreement will be deemed to have been so modified.

19. **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" will include use of and access to the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Customer, including any new or surviving entity that results from such merger, acquisition and/or other consolidation. However, the following will not be considered "assignments" for purposes of this Agreement: SunGard Public Sector's assignment of this Agreement or of any SunGard Public Sector rights under this Agreement to SunGard Public Sector's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and SunGard Public Sector's assignment of this Agreement to any person or entity to which SunGard Public Sector transfers any of its rights in the Software. The terms of this Agreement shall be binding upon the parties hereto and their successors and/or assignees.

20. **Force Majeure.** Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

21. **Contractual Documents.** This Agreement, along with its Schedule A - Order Form, the Standards Sheet, and any supplements or modifications thereto, contains the complete agreement between the parties with respect to the subject matter hereof. No additional representations, agreements or modifications or amendments to this Agreement hereafter made by a party shall be binding upon either party unless in writing and signed by Customer and accepted in writing by an authorized officer of SunGard Public Sector at its offices in Lake Mary, Florida. This Agreement shall not be construed against the party who drafted the same.

VILLAGE OF WELLINGTON, FL

SUNGARD PUBLIC SECTOR INC.

Authorized Signature

Ronald E. Goodrow

Exec.VP, SunGard Public Sector Inc

Print Name & Title

Print Name & Title

Date

April 14, 2009

Date

5. E

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME:** RESOLUTION R2009-34 (APPROVE SPECIAL PURCHASE OF ROYAL PALM TREES)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, DIRECTING THE VILLAGE STAFF TO DEVIATE FROM ITS NORMAL PURCHASING POLICY AND RELY ON TELEPHONE QUOTATIONS FOR THE PURCHASE OF CERTAIN TREES FOR \$90,007.02 FROM J.I.C. ENTERPRISES IN ORDER TO TAKE ADVANTAGE OF SAVINGS CAUSED BY J.I.C. ENTERPRISES NEED TO REMOVE TREES FROM A FLORIDA POWER & LIGHT RIGHT-OF-WAY BY THE END OF APRIL; AND PROVIDING AN EFFECTIVE DATE

ACTION REQUESTED: Discussion ☐ Approval ☒**BUDGET AMENDMENT****REQUIRED:** Yes ☐ No ☒ See Below ☐**PUBLIC HEARING:** Yes ☐ No ☒**FIRST READING** ☐**SECOND READING** ☐

REQUEST: Authorization from Council to exempt the purchase of Royal Palm trees from the normal competitive requirements of the Purchasing and Procurement Manual. The exemption would allow three hundred (300) trees to be purchased from J.I.C. Enterprises for a cost of \$90,007.02 (Avg.Cost/Tree \$300.02). Comparable pricing from two (2) other vendors is \$175,653.00 (Avg. Cost/Tree \$585.51) and \$185,748.00 (Avg. Cost/Tree \$619.16). Total savings to the Village is \$85,645.98. Funds to pay for the trees would be allocated from CIP projects on Forest Hill Boulevard, Greenview Shores, Village Park Second Entrance, and Pierson Road Median projects, as well as from the Landscape Department materials and supplies budget.

EXPLANATION: J.I.C. Enterprises has an urgent need to remove three hundred (300) Royal Palm trees from their premises, by no later than the end of April, due to being in a FPL right-of-way. The trees are available in grey wood sizes of 12, 13, 14, and 15 feet. J.I.C. has offered to sell the trees to the Village at a cost of \$90,0007.02 which is about a 50% discount from open market purchase prices. Normally, the trees would cost between \$175,000 and \$185,000 based on comparative pricing from two (2) other vendors. The Village's Purchasing and Procurement Manual, Section 2.1 – Items Exempt from Competition, Item 22, provides that Village Council Directive as being exempt from the competitive process. Staff is requesting that Council exercise its authority and exempt this purchase from the competitive requirements of the Purchasing and Procurement Manual due to the special pricing and the short time frame for relocating the trees. The trees will be stockpiled and preserved for use on Forest Hill Boulevard, Greenview Shores, Village Park Second Entrance, and Pierson Road Median projects, as well as for general replacement of Royal Palm trees throughout the Village.

FISCAL IMPACT:

<u>CIP Project</u>	<u>Account No.</u>	<u>Project #</u>	<u>Amount</u>
Forest Hill Boulevard	133-2021-541.65-20	200911	\$67,505.27
Greenview Shores	133-2021-541.65-17	200501	9,000.70
Village Park 2 nd Entrance	125-5032-572.65-44	200901	4,500.35
Pierson Road	135-2022-541.65-47	200810	4,500.35

General Allocation:

Land. Maint./Mat'l & Sup	001-2050-539.52-01	<u>4,500.35</u>
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TOTAL: **\$90,007.02**

Purchase Price: **\$90,007.02**

RECOMMENDATION: Approve the purchase of three hundred (300) Royal Palm trees from J.I.C. Enterprises in the amount of \$90,007.02 by exemption from the competitive requirements of the Purchasing and Procurement Manual, as presented.

RESOLUTION NO. R2009-34

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, DIRECTING THE VILLAGE STAFF TO DEVIATE FROM ITS NORMAL PURCHASING POLICY AND RELY ON TELEPHONE QUOTATIONS FOR THE PURCHASE OF CERTAIN TREES FOR \$90,007.02 FROM J.I.C. ENTERPRISES IN ORDER TO TAKE ADVANTAGE OF SAVINGS CAUSED BY J.I.C. ENTERPRISES NEED TO REMOVE TREES FROM A FLORIDA POWER & LIGHT RIGHT-OF-WAY BY THE END OF APRIL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington has or will have the need for trees related to various upcoming landscaping and right-of-way projects; and

WHEREAS, J.I.C. Enterprises has trees located on property that is within a Florida Power & Light right-of-way for which they have received an order from Florida Power & Light to clear the right-of-way; and

WHEREAS, the need to clear the right-of-way has resulted in J.I.C. Enterprises offering the trees for sale at substantial savings to customers; and

WHEREAS, the Village does not have time to proceed with a formal bid process prior to the trees being destroyed or sold elsewhere; and

WHEREAS, based on telephone quotations obtained from reputable tree farms, the Village staff has determined that the proposed purchase of 300 trees from J.I.C. Enterprises at a negotiated cost of \$90,007.02 would result in a savings to the Village of approximately \$85,000; and

WHEREAS, the Village staff recommends the Village Council authorize the procurement of the trees from J.I.C. Enterprises without the necessity of going through a formal bid process.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Village Manager is directed to acquire on behalf of the Village of Wellington 300 trees from J.I.C. Enterprises at a cost of \$90,007.02, waiving all additional bidding requirements in order to realize the savings generated by the unusual circumstances described above.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of April, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney

J.I.C. Enterprises
Price for Acquisition of Royal Palm Trees

# of Trees	Grey Wood Size	Cost/Tree	Total Cost
70	12	\$267.48	\$18,723.60
90	13	\$289.77	\$26,079.30
72	14	\$312.06	\$22,468.32
68	15	\$334.35	\$22,735.80
Subtotal:			
300	Average Cost/Tree:	\$300.02	\$90,007.02
Price is a delivered price to a job site within the Village of Wellington.			
Note: Owner is willing to warranty 5% of the trees (most companies never offer a warranty)			

Aldos
Price for Acquisition of Royal Palm Trees

# of Trees	Grey Wood Size	Cost/Tree	Total Cost
70	12	\$522.00	\$36,540.00
90	13	\$565.50	\$50,895.00
72	14	\$609.00	\$43,848.00
68	15	\$652.50	\$44,370.00
Subtotal:			
300	Average Cost/Tree:	\$585.51	\$175,653.00
Price is a delivered price to a job site within the Village of Wellington.			

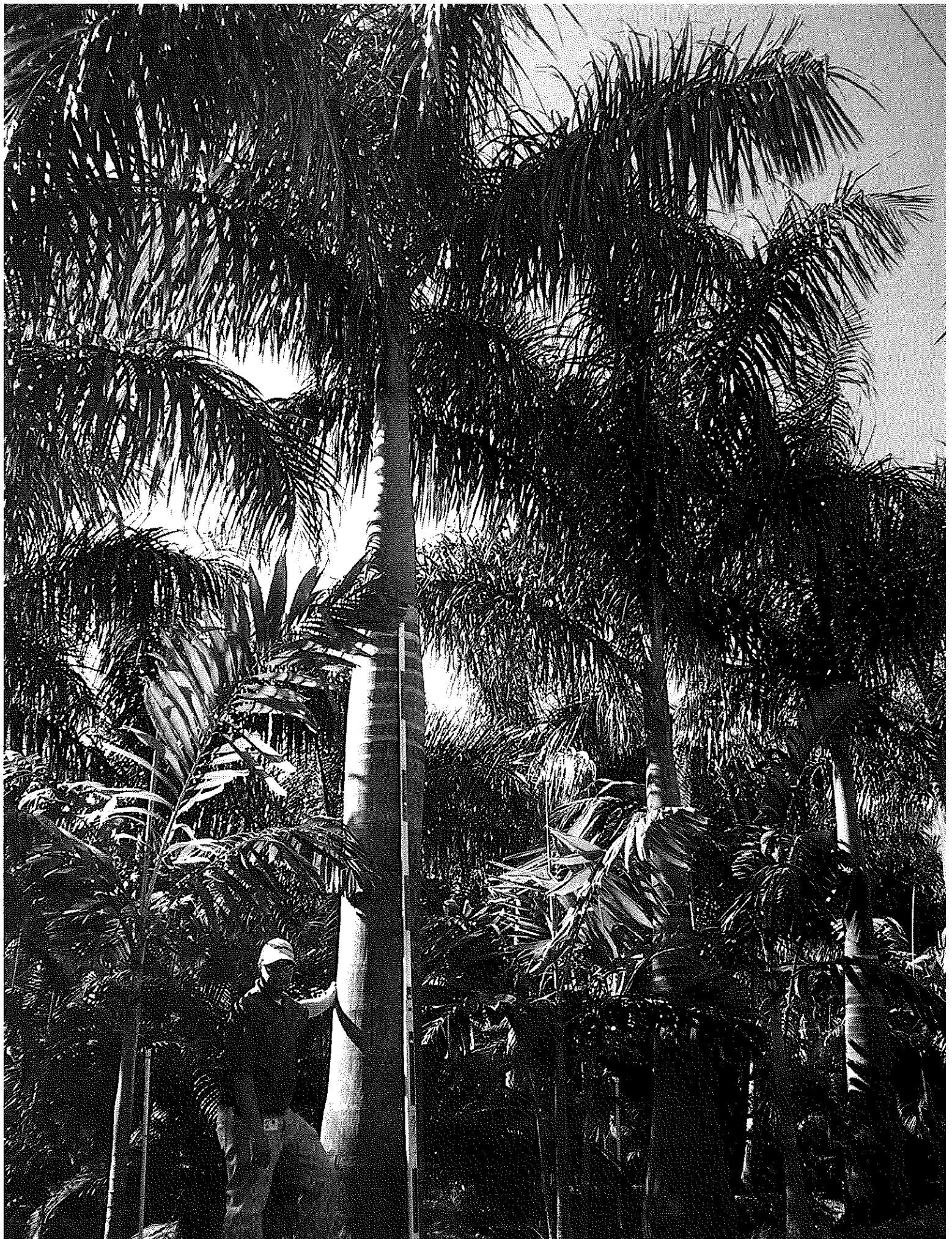
AMG Farms
Price for Acquisition of Royal Palm Trees

# of Trees	Grey Wood Size	Cost/Tree	Total Cost
70	12	\$552.00	\$38,640.00
90	13	\$598.00	\$53,820.00
72	14	\$644.00	\$46,368.00
68	15	\$690.00	\$46,920.00
Subtotal:			
300	Average Cost/Tree:	\$619.16	\$185,748.00
Price is a delivered price to a job site within the Village of Wellington.			

TOTAL SAVINGS: **\$85,645.98**

Potential Uses for Trees

Forest Hill
 Greenview Shores
 Village Park 2nd Entrance
 General Replacement
 Pierson Road Median



5. F

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-32 (THIRD AMENDMENT TO THE AGREEMENT FOR LAW ENFORCEMENT SERVICES BETWEEN THE PALM BEACH COUNTY SHERIFF'S OFFICE AND THE VILLAGE OF WELLINGTON)

A RESOLUTION OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE THE THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICES AGREEMENT WITH PALM BEACH COUNTY SHERIFF'S OFFICE, FOR LAW ENFORCEMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☒ No ☐ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Council is requested to approve the Third Amendment to the Law Enforcement Services Agreement.

EXPLANATION: At the March 10, 2009 Village Council meeting, Council approved the Safe Neighborhood's Initiative and authorized the Village Manager to negotiate with the Palm Beach County Sheriff's Office for the additional deputies as required.

This initiative contains specific direction to provide additional law enforcement personnel to our transitional neighborhoods in an effort to stem the spread of crime related problems. This addendum to the current Law Enforcement Services agreement (attached) provides for two (2) additional Community Policing Officers (COP's) for use in targeting the neighborhoods which have been identified in the Safe Neighborhoods Initiative.

Council previously approved a sum of \$110,000.00 for partial year costs related to the addition of the two (2) officers. In addition, a full year cost was approved in the sum of approximately \$220,000.00. Actual costs for a full year are estimated to be \$225,040.80.

FISCAL IMPACT: The initial fiscal impact is expected to be approximately \$93,767.00 for the remaining portion of FY09.

RECOMMENDATION: Council approval of the Third Amendment to the Law Enforcement Services Agreement.

RESOLUTION NO. 2009-32

A RESOLUTION OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE THE THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICES AGREEMENT WITH PALM BEACH COUNTY SHERIFF'S OFFICE, FOR LAW ENFORCEMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 26, 2006, Village Council approved the Law Enforcement Service Agreement effective October 1, 2006 for a period of five years subject to approval by Council of annual budget proposals by the Sheriff's Office to provide law enforcement services for the Village of Wellington; and

WHEREAS, The parties have negotiated an increase in the level of service to provide two additional Deputy Sheriff allocations for the purpose of providing additional law enforcement services in transitional neighborhoods; and

WHEREAS, Staff recommends that the Village Council approve the proposed Third Addendum to the Law Enforcement Service Agreement between the Village and the Palm Beach County Sheriff's Office.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Village Council hereby approves the Third Addendum to the Law Enforcement Service Agreement by and between the Palm Beach County Sheriff's Office and the Village of Wellington, as attached hereto as Exhibit "A", and hereby authorizes the Mayor and Village Clerk to execute the Agreement.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED and **ADOPTED** on this _____ day of April, 2009.

ATTEST:

VILLAGE OF WELLINGTON

BY: _____
Awilda Rodriquez, Village Clerk

BY: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney

**THIRD ADDENDUM TO THE AGREEMENT FOR LAW ENFORCEMENT SERVICES BY
AND BETWEEN THE PALM BEACH COUNTY SHERIFF'S OFFICE AND THE VILLAGE
OF WELLINGTON**

This Third Addendum to the Law Enforcement Service Agreement is made by and between the Village of Wellington (hereinafter referred to as the "VILLAGE"), located in Palm Beach County, and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida (hereinafter referred to as the "SHERIFF"). The VILLAGE and the SHERIFF may also hereinafter be referred to as the "Parties."

WHEREAS, the Parties executed a Law Enforcement Service Agreement effective October 1, 2006, a First Addendum effective October 01, 2007 and a Second Addendum effective October 1, 2008 (the "Agreement"), by which the SHERIFF agreed to perform law enforcement services; and

WHEREAS, the parties wish to adjust the level of service by adding two deputy sheriff allocations assigned within the Village specifically for the purpose of providing additional law enforcement services to the Village's transitional neighborhoods as identified in our Safe Neighborhoods Initiative and as authorized by the Village Council during their regular meeting on March 10, 2009 ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained the receipt and sufficiency of which are hereby acknowledged, it is agreed upon as follows:

- 1 The level of service and allocations for the portion of the term in the Third Year of this Agreement, that being May 1, 2009 through September 30, 2009, is reflected in revised EXHIBIT A, attached and incorporated as if fully stated herein. Revised Exhibit A hereby replaces former Exhibit A to the Agreement and is effective May 01, 2009.

- 2 The total amount due for services for the current term shall be adjusted by \$93,767.00 (which reflects an annual cost of \$ 225,040.80) to account for the cost of the additional allocations of two deputy sheriffs. Therefore, in accordance with Article 5, Section 5.2 of the Law Enforcement Service Agreement, Section 5.1 is amended as to the total amount due for services for the period beginning May 01, 2009 through September 30, 2009 as follows: The total cost of all personnel and equipment shall be \$2,949,663.00. The monthly payments shall be \$589,932.60. The last monthly payment shall be \$589,932.60.
- 3 In all other respects, the terms and conditions of the Agreement shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed the Addendum to the Agreement as of the last date all signatures below are affixed.

PALM BEACH COUNTY SHERIFF'S OFFICE

THE VILLAGE OF WELLINGTON

BY: _____

Ric L. Bradshaw

BY: _____

Darell Bowen

Title: Sheriff

Title: Mayor

Witness: _____

Michael Veccia, Major

Witness: _____

Awilda Rodriguez, Village Clerk

DATE: _____

DATE: _____

EXHIBIT A*

During the third year of this Agreement, and commencing on May 1, 2009, the SHERIFF

Shall provide additional staffing comprised of two (2) deputies. These new positions shall supplement all existing positions provided in the previous fiscal years. For the remaining term of this Agreement, staffing level recommendations shall be included in the annual Law Enforcement Services Plan.

Staffing Comparison:

<u>Positions</u>	<u>10/01/ 08 to 04/30/09</u>	<u>05/01/09 to 09/30/09</u>
Captain	1	1
Lieutenant	1	1
Sergeant	6	6
Deputy Sheriff	46	46
Motor units	2	2
Problem Oriented Police	2	4
Planner	1	1
Administrative Secretaries	2	2
Law Enforcement Aide	1	1
Clerical Specialist	1	1

School Crossing Guard

42

42

* This Exhibit A was adopted as part of the Third Addendum to the Agreement effective May 1, 2009.

8. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME:** Palms West Chamber of Commerce Request for Banners and A-Frames**ACTION REQUESTED:** Discussion ☐ Approval ☒**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐**PUBLIC HEARING:** Yes ☐ No ☒**FIRST READING** ☐**SECOND READING** ☐

REQUEST: The Palms West Chamber of Commerce is requesting permission to hang banners, and the use and display Village of Wellington A-Frames for the annual Taste of the West and Chocolate Lovers' Festival scheduled for June 4th at the South Florida Fairgrounds.

EXPLANATION: The Palms West Chamber of Commerce (PWCC) will be hosting the annual Taste of the West and Chocolate Lovers' Festival on Thursday, June 4th 2009. The PWCC is seeking the Village of Wellington's assistance in informing the public about the event and to help ensure as strong a turnout as possible. The PWCC is requesting Council's approval of the following:

- To hang a 4' x 8' Taste of the West banner at the original Wellington Mall. Permission has been granted from Jess Santamaria to display such a banner at the corner of Forest Hill Boulevard and Wellington Trace from Wednesday, May 20th through Wednesday, June 4th 2009. This permission is contingent upon the Village of Wellington's approval.
- The use of the Village's sandwich boards along the main thoroughfare of Wellington (Forest Hill Boulevard) from Friday, May 29th through Thursday, June 4th to help promote the event for local businesses.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff requests Council direction on the PWCC's request to hang such banners, and the use and display of the Village of Wellington A-Frames for the annual Taste of the West and Chocolate Lovers' Festival.

Village of Wellington

ADMINISTRATIVE TRANSMITTAL

DATE: April 22, 2009

TO: ☐ **x** **BOWEN**
 ☐ **x** **PRIORE**
 ☐ **x** **BENACQUISTO**
 ☐ **x** **WILLHITE**
 ☒ **X** **COATES**

FROM: Paul Schofield

Paul

CC: **Senior Staff**
 Awilda Rodriguez, Village Clerk
 Jeffrey Kurtz, Village Attorney

RE: **Palms West Chamber of Commerce Request for Banners and A-Frames**

We have received the attached request from the Palms West Chamber of Commerce.

They are seeking permission to place a banner in the "original" Wellington Mall, from Wednesday May 20th through Wednesday, June 4, 2009, and to place A-Frames (ours) along Forest Hill Boulevard from Friday, May 29th through Thursday, June 4th advertising their Taste of The West Chocolate Lovers event. The event will be held at the South Florida Fair Grounds on June 4, 2009.

I am placing the request on the April 14th council agenda and will discuss it in more detail at the agenda review on the 13th.

April 3, 2009

Mr. Paul Schofield
Village of Wellington
14000 Greenbriar Boulevard
Wellington, FL 33414

RE: *Taste of the West & Chocolate Lovers' Festival – June 4, 2009*
Permission to hang Banner – Original Wellington Mall, 12794 Forest Hill Blvd.
Use and display of Village of Wellington Sandwich Boards

Dear Mr. Schofield,

The Palms West Chamber's annual Taste of the West and Chocolate Lovers' Festival is scheduled for June 4th at the South Florida Fairgrounds. As you know, this event showcases our local western community restaurants, caterers and businesses. In this time of financial hardship for many of our local businesses, we are seeking the Village of Wellington's assistance in informing the public about the event and helping ensure as strong a turnout as possible. We are requesting Council's approval of the following:

- To hang a 4' x 8' Taste of the West banner at the original Wellington Mall.
We have received permission from Jess Santamaria to display such a banner at the corner of Forest Hill Boulevard and Wellington Trace from Wednesday, May 20 through Wednesday, June 4 2009. This permission is contingent upon the Village of Wellington's approval.
- The use of the Village's sandwich boards along the main thoroughfare of Wellington (Forest Hill Boulevard) from Friday, May 29 through Thursday, June 4 to help promote the event for local businesses.

We trust that you will consider this request as an effort to do all that we can as a community to help our restaurants and small businesses during this very hard economic climate. We look forward to hearing back from you shortly.

Sincerely,

Jaene Miranda

Jaene Miranda
CEO Palms West Chamber of Commerce

cc: Mayor Darell Bowen

MEMORANDUM

TO : Mayor Bowen
Vice Mayor Priore
Councilperson Benacquisto
Councilperson Willhite
Councilperson Coates

cc: Paul Schofield, John Bonde, Francine Ramaglia, Jim Barnes and Marty Hodgkins

FROM: Jeffrey S. Kurtz, Esq.

DATE: April 20, 2009

RE : Sign Codes

The Village Council has received requests from both the Palms West and Wellington Chambers of Commerce to allow signage advertising separate community events that each of them are sponsoring. The Village’s sign code prohibits 1) off-premise signs and billboards; 2) signs consisting of one or more banners, unless otherwise allowed; 3) sandwich board and A-frame signs; 4) banners erected over or across any public street or right-of-way, except as may be otherwise be expressly permitted by the village; and 5) signs located within public rights-of-way, except as may be otherwise expressly permitted herein (Sec 7.14.7 “Prohibited Signs” of the Village’s LDR’s).

The Palms West request is to advertise the Taste of the West and Chocolate Lover’s Festival, June 4th at the South Florida Fairgrounds by using an off premise banner for two weeks preceding the event and the Village’s sandwich boards along Forest Hill Boulevard for a week before the event.

The Wellington Chamber is requesting usage of the A-frames prior to their Flavors 2009 event on May 8th.

The best argument for the allowance of the proposed signage under the Village’s current code is that Public Signs which are signs erected by a governmental body (i.e., Village’s A-frames) such as traffic control, safety, or directional signs that inform the public of civic events or facilities are exempt from the requirements of the sign code and may be erected without a permit. The use of Village A-frames for the purposes suggested by the Chambers’ strains the intent the public sign exemption and does not help in addressing the proposed banner.

Opening the Village’s rights-of-way up to advertising by private entities, even for special events, is problematic because the Village will not be able to discriminate against the proposed advertising based on the content of the message, type of event, and will have difficulty in discriminating based on the type of entity making the request (what is a community/civic event or organization?)

These events and the related signage are distinguishable from the Village's signage announcing the Equestrian season or branding the Village as the Winter Equestrian Capital of the World, these events are also distinguishable from the Holiday Parade, Egg Hunt, 4th of July Celebration, Fall Festival where the Village is a sponsor of the event.

While clarification of the extent to which the Village's rights-of-way shall be opened up for such Village sponsored events is in order a heightened level of concern and caution should be exercised in allowing the rights-of-way to be utilized for non-Village sponsored activities.

If the Council decides the requested signage is appropriate, the Council should be prepared to give clear direction on the limits it wishes to impose on special event signage in the right-of-way remembering that it will not be able to limit or control content or limit usage of such signage to only popularly accepted community groups or entities. If Council's intent is to allow the special event signage direction for staff to begin amending the sign code ordinances in accordance with Council's specific direction should be given, so no enforcement of the code this year is based on a "zoning in progress" argument if and when other requests come forward.

Since the sign premises are within the LDR's, any proposed amendments will have to be brought before the Planning and Zoning Board, therefore, absent special meetings being called adoption of the revised sign code would not be completed until July.

JSK/jlb

8. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: Wellington Chamber of Commerce Request for Informational and A-Frame Signs

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: The Wellington Chamber of Commerce is requesting permission to use the Village's informational and A-Frame signs to advertise the 2009 Flavors event scheduled for May 8th at the International Polo Club.

EXPLANATION: The Wellington Chamber of Commerce (WCC) will be hosting the 2009 Flavors event on Friday, May 8th, 2009. The event is expected to draw 500-700 visitors to this event. The WCC is seeking the Village of Wellington's assistance in informing the public about the event.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff requests Council direction on the WCC's request to the use and display of the Village of Wellington's A-Frames for the 2009 Flavors event.

DISTRIBUTED TO ALL APPLICABLE PERSONS ON: <u>4/8/09</u>		
COUNCIL <u>✓</u>	MANAGER <u>✓</u>	
CLERK <u>✓</u>	ATTORNEY <u>✓</u>	STAFF <u>SR</u>
ADDRESSED TO ALL COUNCIL		
ADDRESSED TO _____		
LOG NO: _____		

ADMINISTRATIVE TRANSMITTAL

DATE: April 7, 2009

TO: ☒ BOWEN
☒ PRIORE
☒ BENACQUISTO
☒ WILLHITE
☒ COATES

FROM: Paul Schofield *Paul*

CC: Senior Staff
Awilda Rodriguez, Village Clerk
Jeffrey Kurtz, Village Attorney

RE: Request by the Wellington Chamber of Commerce to use entry marquis and a-frames

I received the attached request from the Wellington Chamber of Commerce seeking permission to use the Villages informational signs and a-frame signs to advertise their 2009 flavors event. The date of the event is May 8th, so I will be placing this request on the April 28th agenda.

Kathy Tatgenhorst

Subject: FW: FLAVORS 2009
Attachments: Wel Chamber Flavors 2009.doc

From: Wellington Chamber Information [mailto:info@wellingtonchamber.com]
Sent: Tuesday, April 07, 2009 9:48 AM
To: Paul Schofield
Cc: Diana S Tashman
Subject: FLAVORS 2009

Good Morning Paul
Respectfully, the Wellington Chamber is requesting promotion of our Flavors 2009 events on the Village Marquis' prior to the May 8th date. This a great community based event drawing 500-700 to Wellington.

Any assistance you may offer will be greatly appreciated.

Best,
Michela

Michela Perillo-Green
Executive Director
Wellington Chamber of Commerce
561-792-6525 Phone
561-792-6200 Fax
www.wellingtonchamber.com
michela@wellingtonchamber.com

MEMORANDUM

TO : Mayor Bowen
Vice Mayor Priore
Councilperson Benacquisto
Councilperson Willhite
Councilperson Coates

cc: Paul Schofield, John Bonde, Francine Ramaglia, Jim Barnes and Marty Hodgkins

FROM: Jeffrey S. Kurtz, Esq.

DATE: April 20, 2009

RE : Sign Codes

The Village Council has received requests from both the Palms West and Wellington Chambers of Commerce to allow signage advertising separate community events that each of them are sponsoring. The Village's sign code prohibits 1) off-premise signs and billboards; 2) signs consisting of one or more banners, unless otherwise allowed; 3) sandwich board and A-frame signs; 4) banners erected over or across any public street or right-of-way, except as may be otherwise expressly permitted by the village; and 5) signs located within public rights-of-way, except as may be otherwise expressly permitted herein (Sec 7.14.7 "Prohibited Signs" of the Village's LDR's).

The Palms West request is to advertise the Taste of the West and Chocolate Lover's Festival, June 4th at the South Florida Fairgrounds by using an off premise banner for two weeks preceding the event and the Village's sandwich boards along Forest Hill Boulevard for a week before the event.

The Wellington Chamber is requesting usage of the A-frames prior to their Flavors 2009 event on May 8th.

The best argument for the allowance of the proposed signage under the Village's current code is that Public Signs which are signs erected by a governmental body (i.e., Village's A-frames) such as traffic control, safety, or directional signs that inform the public of civic events or facilities are exempt from the requirements of the sign code and may be erected without a permit. The use of Village A-frames for the purposes suggested by the Chambers' strains the intent the public sign exemption and does not help in addressing the proposed banner.

Opening the Village's rights-of-way up to advertising by private entities, even for special events, is problematic because the Village will not be able to discriminate against the proposed advertising based on the content of the message, type of event, and will have difficulty in discriminating based on the type of entity making the request (what is a community/civic event or organization?)

These events and the related signage are distinguishable from the Village's signage announcing the Equestrian season or branding the Village as the Winter Equestrian Capital of the World, these events are also distinguishable from the Holiday Parade, Egg Hunt, 4th of July Celebration, Fall Festival where the Village is a sponsor of the event.

While clarification of the extent to which the Village's rights-of-way shall be opened up for such Village sponsored events is in order a heightened level of concern and caution should be exercised in allowing the rights-of-way to be utilized for non-Village sponsored activities.

If the Council decides the requested signage is appropriate, the Council should be prepared to give clear direction on the limits it wishes to impose on special event signage in the right-of-way remembering that it will not be able to limit or control content or limit usage of such signage to only popularly accepted community groups or entities. If Council's intent is to allow the special event signage direction for staff to begin amending the sign code ordinances in accordance with Council's specific direction should be given, so no enforcement of the code this year is based on a "zoning in progress" argument if and when other requests come forward.

Since the sign premises are within the LDR's, any proposed amendments will have to be brought before the Planning and Zoning Board, therefore, absent special meetings being called adoption of the revised sign code would not be completed until July.

JSK/jlb

8. C

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: Consideration of Lease with PBCC for K-Park site

ACTION REQUESTED: Discussion ☒ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Staff seeks Council direction with respect to the acceptability of the terms and conditions of the proposed lease with Palm Beach Community College.

EXPLANATION: Following the Village Council meeting of Tuesday, April 14th PBCC's Board of Trustees is scheduled to meet and consider the terms of the lease and give direction to their staff on April 22nd. Staff level negotiations are to be renewed on April 22nd and the Village Council will again meet to discuss the lease at an April 23rd Council workshop meeting. Staff will seek direction on the approval of the lease as presented.

FISCAL IMPACT: N/A

RECOMMENDATION: Council direction on the acceptability of the lease as presented.

Village of Wellington

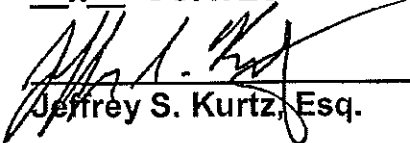
DISTRIBUTED TO ALL APPLICABLE PERSONS ON: <u>4/10/09</u>	
COUNCIL <input checked="" type="checkbox"/>	MANAGER <input checked="" type="checkbox"/>
CLERK <input checked="" type="checkbox"/>	ATTORNEY <input checked="" type="checkbox"/> STAFF <input checked="" type="checkbox"/>
ADDRESSED TO <u>ALL COUNCIL</u>	
ADDRESSED TO _____	
LOG NO: _____	

ADMINISTRATIVE TRANSMITTAL

DATE: April 10, 2009

TO: ☒ BOWEN
☒ PRIORE
☒ BENACQUISTO
☒ WILLHITE
☒ COATES

FROM:


Jeffrey S. Kurtz, Esq.

CC: Paul Schofield
Senior Staff

RE: Status of PBCC Negotiations

This memorandum will summarize the status of the negotiations since the Village Council Workshop on March 19th.

On March 30th, Mr. Schofield and I met with the PBCC representatives and discussed the issues Council had given direction on. As a result of that meeting, Ms. Loggins was responsible for drafting changes to the lease to address the concerns and issues raised by the Village Council. The Village received the draft lease late on Friday, April 3rd and provided a revised markup back to PBCC on Thursday, April 9th. Mr. Schofield and I have a meeting scheduled with PBCC representatives on Monday, April 13th prior to the Council's Agenda Review.

From the staff's perspective, the following significant issues need to be resolved prior to entering into the lease

1. Level of participation/control that Acme/Village will have over the master planning and design process.

PBCC's position: the land is under their control for the duration of the lease. The Village should review the development project in its regulatory capacity to make sure it complies with applicable laws and ordinances.

Acme/Village position: Acme, as the owner of the property, should have review and approval authority over the two basic phases of the development and the architectural vision of the project. Further, that the Master Plan will be reviewed prior to presentation for regulatory review to make sure the Master Plan and its amendments are consistent with the approved Conceptual Design. This issue, which we have been consistent in presenting to PBCC during the negotiations, is re-introduced into the lease through the Conceptual Design language.

The real issue is it appears that PBCC's Master Plan is not yet well-formulated and the only thing that is well-defined is the need for 3 multi-purpose fields to satisfy Acme and a 36,000 square foot classroom/administration building (which will end up in the long-term functioning as only a classroom) to meet their anticipated short-term needs. For the long term, they want to maintain as much flexibility and freedom in their decision making and implementation of developing the campus as possible and really are saying in essence, "look at our track record of growth and development at other locations and believe, based on that record, PBCC is a good steward of the land and will develop a quality campus in Wellington." In our discussions, PBCC representatives have shown reluctance in moving toward the Village's position.

2. **University Partnership Center (UPC):** The Council has to give us further consensus direction on the nature and extent of the UPC.

PBCC position: The property will offer 4 year degrees and graduate degrees at the site. They further indicate that they will cooperate with other institutions as a benefit for the students.

Acme/Village position: We have advised PBCC that the UPC concept is important to the Village/Acme and it should be implemented as early as possible, preferably as a part of Phase I. We have advised them of Councilwoman Benacquisto's concept and provided them with the writings in which Councilwoman Benacquisto clearly outlines her vision for the UPC. The Council, as a whole, has not yet adopted Councilwoman Benacquisto's vision, and we need to know in order to finalize the negotiations whether there is a Council mandate that vision or some version of it be put into the lease and, if so, during which phase of development must it come to fruition. (a copy of Councilwoman Benacquisto's suggested minimum requirements for the UPC is attached).

3. **Phasing:**

PBCC position: PBCC has proposed a minimal outline of the phased development (a copy of their Phased Exhibit is attached along with a copy of

their Phased Schedule described in the original draft lease). PBCC has agreed to a 4 year timetable for completion of Phase I. They have agreed to a reverter of the leasehold if they do not complete Phase I timely. They have proposed that Phase II would be commenced within 5 years of the Development Order approval and Phase III within 15 years of the Development Order approval. PBCC anticipates the Development Order process to take two years from the effective date of the Lease.

Village/Acme position: The Village has proposed more definitive completion dates and commencement dates that bring Phase I complete for fall classes of 2013, commencement of Phase II within 5 years of the effective date of the Lease and Phase III within 10 years of the effective date of the lease (the lease sent back to the College contains a typographical error in that it still references Phase III commencing 15 years from the effective date). The Village has reverter provisions for land encompassed by Phase II and Phase III if they are not timely initiated.

Since PBCC's proposed phasing was not available at the time of the Council's Workshop, direction is needed as to whether the level of specificity contained in their schedule is sufficient and if not, what items or level of specificity is necessary.

4. Monetary Consideration for the Lease:

PBCC's position: \$10 per year.

Acme/Village position: In looking back at our notes, neither Mr. Schofield nor I could find that the Council, as a body, has directed us to remove the monetary rent on the last 25 years of the Lease. Council direction is sought on what level of monetary rent in addition to the field construction and maintenance, if any, is required.

5. Maintenance of Recreational Facilities:

PBCC position/Acme/Village position: Both staffs are reviewing the maintenance standards to determine material differences between the two.

The Village wants a minimum standard adhered to which is not subject to a discretionary change by PBCC.

6. Subordination of Acme's fee interest:

PBCC position: has proposed subordination be done if necessary for financing.

Village/Acme position: Subordination may not occur without Acme's prior consent I believe they will acquiesce to our position.

7. Sublease:

PBCC's position: They have the right to sublease.

Village/Acme position: Acme has the right to review sublease/partnership agreements to determine compliance with intent of lease.

There has been a suggestion that if PBCC sublease/licenses/partners in a manner that results in them getting a financial benefit, Acme should participate in any rents or other form of remuneration. Council direction on whether and to what extent Acme should seek to participate in those types of relationships.



VILLAGE OF WELLINGTON

Village Council
Darell Bowen, Mayor
Dr Carmine A. Priore, Vice Mayor
Lizbeth Benacquisto, Councilwoman
Matt Willhite, Councilman
Howard Coates, Councilman

Village Manager
DISTRIBUTED TO ALL APPLICABLE PERSONS ON: 4/10/09
COUNCIL ☒ MANAGER ☒
CLERK ☒ ATTORNEY ☒ STAFF ☒
ADDRESSED TO ALL COUNCIL
ADDRESSED TO _____
LOG NO: _____

Memorandum

To: Councilwoman Lizbeth Benacquisto
CC: Darell Bowen, Carmine Priore, Matt Willhite, Howard Coates
Jeff Kurtz
From: Paul Schofield *Paul*
Date: April 10, 2009
Subject: University Partnership

I wanted to take a moment and review on our conversations regarding your position on the necessity of University Partnership component of any agreement with Palm Beach Community College.

I am aware, and we have made the Community College aware that you have always considered the University Partnership (UP) an essential part of any agreement with the College. The last refinement of your position is attached to this memorandum, and that memorandum has been provided to the Community College.

I believe that there is a general consensus that the University Partnership is an essential component of any campus; however, there has not been specific direction on the UP details. The specifics still remain to be discussed and agreed to by Council. I expect that council will provide that direction on either April 13th or 14th. I clearly understand that the UP must be included in the lease document, and it is my intention that direction of specifics will be provided at either the next agenda review or Council meeting. Mr. Kurtz and I are meeting with the College on Monday and will reiterate the necessity of including the UP in the lease.



MEMORANDUM

TO: Paul Schofield
FROM: Lizbeth Benacquisto
DATE: March 31, 2009
SUBJ: University Partnership Center

Below are my preliminary thoughts as to what our University Partnership Center should encompass. I would like to have these items considered as part of the proposed lease agreement with PBCC and plan to discuss these at the upcoming Council meeting on April 14th.

Educational Campus/Research Park

- Village retains SR7 frontage acres for future development by VOW
- PBCC lease will be for remaining acreage and is to include UPC site
- Master Plan is for the complete campus environment, including a business incubator program and all other related higher educational purposes
- The entire campus development will not be subject to height limitations
- Should additional higher educational opportunities for any of the unbuilt pods be proposed, PBCC has the right of first refusal

UPC Construction

UPC must be planned and designed within Phase I and construction must be completed no later than 60 months from lease signing or earlier to the extent funds become available:

- First PBCC building completed within 48 months (earlier to the extent funds become available)
- At least 1/3 of 1st PBCC building dedicated to UPC until UPC building completed
- UPC building shall be at least 60,000 square feet in size and its construction shall begin no later than CO of 1st building

Page Two
University Partnership Center

UPC Development & Governance

Creation of UPC Board of Trustees:

- Consists of at least 5 members, 3 of which are members appointed by PBCC and 2 members appointed by VOW
- Created concurrent with Master Approval (within 12 months of lease signing)

UPC Foundation:

- Separate UPC fundraising organization
- Unlimited board membership with a designated number of VOW and PBCC seats
- Created within 6 months of lease signing

UPC Director hired prior to Master Plan completion or earlier to the extent funds become available

Definition of Potential Partners

- Pattern after St Petersburg College Model with a short-term goal of at least 6 to 10 accredited university partners providing programming
- Temporary space for UPC provided by VOW at WCC or other location immediately upon lease signing
- Partner and program recruitment/selection will be immediate and going upon lease signing. Distance learning and any other possible programs will be implemented at the earliest possible time

EXHIBIT F

Palm Beach Community College Master Plan

Phase I - 2015

Parking Required - 523 spaces | **Parking Provided** - 771 spaces

GSF Constructed | 135,000 GSF

Site Infrastructure Storm Water Drainage, Utilities, Parking,
Phase I Loop Road, Two (2) Palm Tram Bus Stops, Landscaping,
Entrances on 441 and Pierson

Educational Facilities Multipurpose Classrooms Instructional and Support
Spaces

University Partnership Building

Auxiliary Facilities Administration/Offices/Student Services Building

Ancillary Facilities Central Energy Plant, Facilities Office/Garage, Generator

Recreation | Total Acreage: **38.5** (3) Multi-Purpose Fields (Lighted)

Open Play Areas, Bathrooms & Concessions Building , 4 Raquetball Courts
(Lighted)

Phase II - 2020

Parking Required - 704 spaces | **Parking Provided** - 1092 spaces

GSF Constructed | 206,000 GSF

Site Infrastructure | Completion of Loop Road, Two (2) Palm Tram Bus Stops

Auxiliary Facilities | Library, Media Services Building

Auxiliary Facilities | EOC/Student Activities/Services

Educational Facilities | Vocational Lab/Classroom Building (Equine Studies)

Auxiliary/Educational Facilities | Student Life Long Learning Center,
including Conference Services

Phase III - 2025

Parking Required - 951 spaces | **Parking Provided** - 1092 spaces

GSF Constructed | 120,000 GSF

Auxiliary Facilities | Performing Arts Center

Auxiliary Facilities | Administration/Student Services Building

Educational Facilities | Educational Studies Center Building (Lab School,
Teacher Education, FAU/Joint Use, Teacher Conference Center)

Educational Facilities | Humanities Building - Arts, Music, Theatre

Site Infrastructure | Expanded surface parking

Recreation | Total Acreage: **29.7** | Heart Trail, Paved Bike Paths

Phase IV - 2030

Parking required - 951 spaces | **Parking Provided** - 1108 spaces
GSF Constructed | 12,400 GSF
Ancillary Facilities | Expand Facilities Service Areas and Garage
Recreation | Total Acreage: 29.2

Phase V - 2035

Parking required - 1556 spaces | **Parking Provided** - 1596 spaces
GSF Constructed | 72,000 GSF
Educational Facilities | Business Administration/Technologies Building
Site Infrastructure | Expanded surface parking
Recreation | Total Acreage: 45.9

**The Law Office of
Glen J. Torcivia and Associates, P.A.
Northpoint Corporate Center
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33407-1950**

Glen J. Torcivia

Telephone (561) 686-8700

**Lara Donlon
Christy Goddeau
Telefax
Jennifer Hunecke
Jeffrey S. Kurtz
www.torcivialaw.com**

(561) 686-8764

April 9, 2009

VIA ELECTRONIC MAIL ONLY

Kathy Loggins, Esq.
319 Clematis Street, Suite 800
West Palm Beach, FL 33401

RE: *THE VILLAGE OF WELLINGTON*

Dear Loggins:

Attached please find revisions to the lease received on April 3rd, based on my discussion with the Village staff. The base lease is the one you sent and all changes should be shown with strikethroughs and underlying. I have not attached revised exhibits, as the staff had not had an opportunity to review the components of the phasing schedule with the Village Council. As to the facility and property maintenance exhibits, the Village staff believes the Village standards as transmitted with the original lease documents should be the standards imposed on the College. The Village Council is going to consider the lease again as part of its April 14, 2009 agenda, and Mr. Schofield and I would appreciate the opportunity to meet with you and Mr. Becker before that Council meeting to see if we can come closer to presenting a lease document that we could recommend based upon the last Council direction. I do not know whether your client has had the opportunity to review the April 3rd version of the lease, but hopefully they have and hopefully we can move closer to the Council's objectives as discussed at our March 30th negotiations, and set forth in this draft of the agreement.

Sincerely,

Jeffrey S. Kurtz

Jeffery S. Kurtz
JSK/cml
Attachment

cc: Paul Schofield
Awilda Rodriguez
Mayor and Village Council

Dan Doorakian, Esq.
Moyle, Flanagan et al
Page 2

LEASE

By and between

**Acme Improvement District, a Dependent Special District of the
VILLAGE OF WELLINGTON, a Florida Municipal Corporation**

And

**The District Board of Trustees of Palm Beach Community College,
A Political Subdivision of the State of Florida**

TABLE OF CONTENTS

1.	DEFINITIONS.....
2.	THE PREMISES.....
3.	DUE DILIGENCE PERIOD.....
4.	TERM.....
5.	LESSEE'S USE OF THE PREMISES.....
6.	CONSTRUCTION OF IMPROVEMENTS.....
7.	APPROVALS TO CONSTRUCT AND OPERATE IMPROVEMENTS; TRAFFIC CONCURRENCY AND CONSTRUCTION OF IMPROVEMENTS.....
8.	RENT.....
9.	TAXES AND UTILITY EXPENSES.....
10.	REPAIRS AND MAINTENANCE OF THE PREMISES.....
11.	CONSTRUCTION LIENS.....
12.	INSPECTION.....
13.	LESSOR AND LESSEE LIABILITY.....
14.	DEFAULT PROVISIONS.....
15.	REMEDIES.....
16.	ASSIGNMENT AND SUBLEASES.....
17.	SALE AND FEE MORTGAGES.....
18.	SALE OF THE FEE SIMPLE ESTATE.....
19.	LEASEHOLD MORTGAGES.....
20.	INSURANCE.....
21.	DESTRUCTION.....
22.	CONDEMNATION.....
23.	NOTICES.....
24.	AMENDMENT TO LEASE.....
25.	RELATIONSHIP OF THE PARTIES.....
26.	LEASE FOR BENEFIT OF PARTIES HERETO.....
27.	RECORDING OF MEMORANDUM OF LEASE.....
28.	QUIET ENJOYMENT.....
29.	NOTICE OF COMPLAINTS OR SUITS.....
30.	UNDERSTANDINGS AND AGREEMENTS.....
31.	SEVERABILITY.....
32.	NO MERGER.....
33.	CAPTIONS.....
34.	GOVERNING LAW AND VENUE.....
35.	TIME OF THE ESSENCE.....
36.	DRAFTER THEORY.....
37.	CONSENTS AND APPROVALS.....
38.	MISCELLANEOUS.....
39.	LIABILITY IN THE EVENT OF ANY DEFAULT.....
40.	THIRD-PARTY BENEFICIARY.....
41.	INDEMNIFICATION.....

COMPLETE TABLE OF CONTENTS

LEASE

THIS LEASE is entered into this _____ day of _____, 2009, by and between **Acme Improvement District, a Dependent Special District of the VILLAGE OF WELLINGTON**, whose address is 14000 Greenbriar Boulevard, Wellington, Florida 33414 ("Lessor or Landlord"), and **The District Board of Trustees of Palm Beach Community College, a Political Subdivision of the State of Florida** ("Lessee or Tenant").

WITNESSETH:

WHEREAS, Lessor is the fee simple owner of that certain unimproved real property more particularly described on Exhibit "A" ("Land") attached hereto, to be verified by a survey certified to and acceptable to the Lessee, and appropriate title insurance companies, completed by a surveyor retained and paid by Lessee and shall be the property leased to Lessee; and

WHEREAS, Lessee has submitted to Lessor a proposal to use the Premises as a college campus in accordance with applicable statutes, regulations, and its mission statement as may be revised; said campus to be built in three (3) separate Phases as defined and agreed upon by the parties on such terms and conditions provided for herein.

WHEREAS, Lessee and Lessor agree that a portion of the Land consisting of Recreational Joint Use Facilities and other such Land as may be designated between the parties shall be subject to a Recreational Joint Use Facilities Usage Agreement to define the maintenance responsibilities, liabilities, and hours of uses relative to the use of the athletic fields, to be agreed upon between the parties, both as generally set forth on Exhibits "B" and "C".

WHEREAS, Lessor has considered the proposal of Lessee and has determined that the proposal submitted by Lessee is in the public interest; and

WHEREAS, Lessor has determined that the construction and use by Lessee of the proposed property for an education facility would provide substantial value to the citizens of Lessor and surrounding communities; and

WHEREAS, Lessee and Lessor desire to enter into this Lease with respect to the property, and Lessee desires to make certain improvements thereon subject to the terms and conditions more particularly described herein below; and

WHEREAS, pursuant to its Resolution _____, Lessor has approved entry into this Lease on the terms and conditions as more particularly set forth therein and herein below.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration and the promises and mutual covenants and agreements set forth herein, Lessor and Lessee hereby agree as follows:

The above recitals are true and correct and are incorporated herein by reference. **DEFINITIONS.** As used herein, unless the context requires otherwise:

1.1. "Conceptual Design". The Conceptual Design shall be completed within the due diligence period. The Lessee shall engage the services of planning design and architectural professionals, as they deem necessary, to prepare a conceptual plan for the development of 45-62 acres of the Land. It is intended by the parties that the conceptual plan will provide guidance for the development of Lessee's Master Plan submission. The Conceptual Design will outline the three phase of development of the Land for use by Lessee. Each individual phase shall be limited to a compact contiguous particularly identified area of the Land and be planned in a manner that the development and usage of the area encompassing a single phase is not dependent on the subsequent development of another phased area. The Conceptual Design and ultimately the master plan will not preclude the reliance on or integration of an subsequent phase to a phase for which construction has been initiated. The intent of defining and identifying the phased areas with particularity is so that the areas can be returned to the Lessor in a minimally disturbed state if the Lessee defaults on the lease or does not use all the Land. The Conceptual Design shall provide an architectural vision for the development of the Land that will guide the master planning process. The Conceptual Design will be presented, reviewed and approved by the Lessor. The Lessor's review of the Conceptual Design shall be done at a public meeting and the review shall be discretionary on the part of the Lessor to determine whether the Conceptual Design is consistent with Lessor's goals and objectives in entering into this lease. The determination of whether the Conceptual Design is consistent with the achievement of the Lessor's goals and objectives shall be determined by a majority vote of the Lessor's governing board and shall not be subject to further review or challenge by any other administrative body or Court. The master plan shall be consistent with the Conceptual Design.

1.24. "Development Order". The Development Order shall set forth the specifications and criteria for development of the Land in accordance with the terms of this Lease and in accordance with the Comprehensive Plan and Land Use Development Regulation of the Village of Wellington as well as the required approvals of all parties and agencies with jurisdiction to impose development criteria, including at local, district, and state levels and with all approval of all parties to this Lease. The Development Order shall encompass all three (3) Phases of the Land Improvements.

1.32. "Due Diligence". Due Diligence shall afford Lessee the opportunity to fully review all applicable traffic and environmental use, zoning, and other developmental approval criteria including Village, county, district, and state criteria that may be required to approve the Master Development Plan and Due Diligence shall commence effective as of the Effective Date.

1.43. "Effective Date". The Effective Date of the Lease shall commence from the date of the last party to sign this Lease, including appropriate authorizations and approvals.

1.54. "Financial Institution" means a bank, savings and loan association, insurance company, or mortgage company or bond financing institution or trustee or bond holder in compliance with such other terms as provided for in this Lease, holding a first mortgage or security interest on the leasehold interest (with subordination by Lessor) and a secured lien on Lessee's tangible personal property as recorded in Palm Beach County, Florida.

1.65. "Improvements" shall mean certain buildings (the "Buildings"), parking areas, and other related improvements hereafter constructed by Lessee for the conduct and operation of a college in accordance with applicable federal, state and local law, and local laws, rules, regulations, codes and ordinances together with the Master Plan and ~~Mission Statement of Lessee and ancillary uses as determined by Lessee and other uses permitted herein as reasonably approved by Lessor.~~

1.67. "Land" means the real property located in the Village of Wellington in Palm Beach County, Florida, consisting of approximately sixty two (62) acres which is subject to this Lease, being more particularly described in Exhibit "A", with all title exceptions depicted thereon, to be verified and properly certified to Lessee evidencing all record title conditions, easements of record, easements or encroachments and all other matters of record that are visible upon inspection of the property, all properly certified to Lessee and the appropriate title company, and verifying that no title conditions existing will hinder or prohibit use as defined herein and with sufficient access for the Use by Lessee.

~~1.87.~~ 1.87. "Lease" shall mean this instrument and all exhibits attached hereto, as same may be amended from time to time.

1.89. "Leasehold Estate" shall mean Lessee's interest in the Land under this Lease and all easements and rights appurtenant thereto.

1.109. "Lessee" shall mean the District Board of Trustees of Palm Beach Community College, a Political Subdivision of the State of Florida.

1.110. "Lessor" shall mean the Acme Improvement District, a dependent district of the Village of Wellington, Florida. ~~which was initially authorized as an~~

~~independent special district pursuant to Chapter 298 Fla. Stat., but is now a dependent district of the Village of Wellington, Florida, and is the fee simple owner of the Land. As a dependent district it is governed by the Wellington Village council with its operations administered by the Village of Wellington's manager and staff with the Public Works Department.~~

1.124. "Master Development Plan" means a plan by Lessee for development of the Land. The Master Plan any any amendments thereto, must be consistent with the Conceptual Design, consistency of the master plan and any amendments thereto shall be determined at a public meeting by majority vote of Lessor's governing body. Upon the expiration of the Due Diligence Period, Lessee shall provide a Master Development Plan for Development of the three (3) Phases of construction consistent with the requirements of the Due Diligence Period and the time frames as set forth in this Lease. It is understood by the Parties that the Master Development Plan for Development of the Land shall be approved by Village in accordance with Village's land use and development criteria and in accordance with all Village, county, district, and state criteria as are required for approval of the Master Development Plan. However, this is a conceptual plan, and the parties acknowledge that ultimate development may deviate from the initial proposed Master Development Plan and approval for any substantial deviations shall not be in accordance with the Village ordinances, then in place and applicable to the amendment of an approved master plan. ~~unreasonably withheld.~~ The Master Development Plan shall allow the use by Lessee and the uses defined for Recreational Joint Use Facilities.

1.1213. "Premises" shall mean the Land and the improvements.

1.143. "Rent" shall mean the sums payable to Lessor under this Lease for use of the Land ("Base Rent"), and any additional charges, which may be assessed by Lessor or payable by Lessee ("Additional Rent") pursuant to the terms of this Lease.

1.154. "Recreational Joint Use Facilities" shall be defined as set forth on Exhibit "B" and will include at a minimum with the concepts including three (3) multi-purpose fields, and one (1) restroom/concession building with all such Facilities to be jointly used between Lessor and Lessee in accordance with the Recreational Joint Use Facilities Usage Agreement. This Usage is more clearly set forth on Exhibit "C" which defines the priorities use, liabilities and terms of the Joint Usage of the Recreational Joint Use Facilities.

1.165. Singular, Plural, Gender. Whenever the context so permits, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

1.176. Triple Net Lease. A lease wherein Lessee shall pay rent, taxes, insurance, maintenance and all other expenses for which Lessee is obligated to pay associated with the Premises with respect to the Premises.

1.187. "Use by Lessee". The use by Lessee shall be that use defined in Paragraph 5.1.

1.198. "Village of Wellington" or "Village" shall mean (Village). The Village of Wellington, a Florida municipal corporation, located in Palm Beach County, Florida, was established by Charter and incorporated in 1995 whereafter, Acme Improvement District became a Dependent District of the Village of Wellington in 1996 and the special acts of Acme Improvement District were to become the ordinances of the Village of Wellington with all assets, liabilities, and contracts of Acme Improvements District remaining unaffected and remain in full force and effect. The Village has the authority to approve the Master Development Plan due to the fact that it has jurisdiction for land use development within the Village. Said jurisdiction is not exclusive as approvals from other agencies are required for land use development.

1.2049. Effect of Definitions. The definitions provided in this Section 1 shall apply throughout this Lease and the Exhibits hereto, as the context requires, whether or not they are capitalized.

2. THE PREMISES.

Lessor hereby leases to Lessee, and Lessee hereby takes and leases from Lessor, upon and subject to all terms, conditions, covenants, and provisions contained herein, the Land and all rights, privileges, and easements benefiting or pertaining to the Land, subject to the land being incorporated into the Conceptual Design. Lessor hereby warrants unto Lessee that Lessor has good and marketable fee simple title in and to the Land and that entry into this Lease does not violate any statutes, ordinances, regulations, or the terms of any other agreement, contracts or financing that have been entered into by Lessor and the leasehold interest is hereby transferred by Lessor unto Lessee pursuant to the terms and conditions contained within this Lease, which shall include the following:

2.1 Any portion of the land, not incorporated into the Conceptual Design, shall be returned to the Lessor and shall not be subject to this lease or the leasehold interest of Lessee. Any portion of the land that is not ultimately utilized by Lessee and is voluntarily returned to Lessor or is returned to Lessor as a result of Lessee's default, shall not be subject to this lease or the leasehold interest of Lessee.

2.21. Applicable building and zoning ordinances and all other restrictions and regulations imposed by governmental authorities having jurisdiction over the Land, Premises, and Improvements to be constructed thereon or which are located thereon, subject to state law, including the Department of Education, regulating state educational institutions, ~~none of which shall preclude Lessee's use as defined herein.~~

2.32. All covenants, terms, provisions, conditions, reservations, restrictions, agreements, assignments, easements, and any other matters of record which affect the Land and Premises and the proposed improvements or improvements thereon, ~~none of which shall preclude the Lessee's uses defined herein.~~

2.43. Any and all matters which would be disclosed by an accurate survey and inspection of the Land, ~~none of which shall interfere with a marketable leasehold title, development of the Premises, or the Lessee's uses defined herein.~~

2.54. All matters of record relating to the Land shall be in that certain owner's title insurance policy written on _____ along with hard copies of all exceptions.

2.65. Any and all other matters affecting the Land, whether recorded or not recorded, ~~with all unrecorded matters, relating to the Land to be provided to by Lessee within ten (10) days of the Effective Date.~~

3. DUE DILIGENCE PERIOD.

Lessor and Lessee acknowledge that Lessee shall have a period of six (6) months from the Effective Date of this Lease (Initial Due Diligence Period) to have the Conceptual Design approved, exercise Due Diligence, at its cost, to inspect the Land and Premises and approve clear and marketable title to the property acceptable to Lessee in order to ensure that the intended use is permissible and financially feasible and that there are no impediments to this use and development. The leasehold policy shall be prepared by Gibson & Loggins, P.A., based upon Attorneys' Title Insurance, Inc. Policy criteria. Such Due Diligence may include, but is not limited to, environmental studies, land use and zoning criteria, record title issues, and/or other studies, and including traffic studies, including traffic approvals sufficient to accommodate all of Lessee's development of the Premises on a Phased basis, and any permits or approvals that may be necessary for the intended use of the Premises by Lessee and a cost feasibility study for Lessee including traffic impact, costs, land planning and zoning criteria and costs, ~~infrastructure~~ infrastructure costs, and the feasibility of compliance with land use requirements. Lessor agrees to cooperate and allow access to the Land and Premises to Lessee during the Due Diligence Period. Lessor shall provide Lessee all information relative to the property which the

Lessor has in its possession, such as, but not limited to, surveys, title evidence, reports, and copies of all title exceptions, and any other items as reasonably requested by Lessee within ~~thirty~~ (310) days of the Effective Date. After the Effective Date, Lessee has the right to enter into the Land and Premises to make determinations or inspections as deemed necessary by Lessee. Lessee agrees to pay for all costs and damages that may be incurred due to the inspections performed on the behalf of Lessee during the Due Diligence Period and to provide to Lessor a copy of any reports or other findings made during Lessee's due diligence inspections. In the event Lessee, in its sole discretion, for any reason finds the Land or Premises are not satisfactory or cost effective for its intended use, the Lessee shall provide written notice prior to the expiration of the Due Diligence Period of termination of this Lease wherein this Lease Agreement shall be cancelled and terminated and all obligations between all parties are deemed null and void and of no further force and effect. The Due Diligence Period may be extended at the request of Lessee subject to the approval of Lessor, for a period of six (6) additional months (Additional Due Diligence Period) after the expiration of the Initial Due Diligence Period in the event further studies or approvals are required including, but not limited to, Conceptual Design, State or DRI approvals, environmental assessments, zoning, land use modification, variances or exceptions, survey and title information, or traffic analysis as are required. In the event that environmental remediation is required, Lessor shall have the ~~obligation~~ opportunity to remediate for any conditions that pre-exist the Effective Date of this Lease and Lessee shall have no liability regarding the presence of environmental hazardous substances during the Due Diligence Period. If Lessor decides not to remediate the environmental condition, Lessor may offer Lessee the opportunity to remediate the environmental condition or terminate the lease by giving written notice to the Lessor. If Lessor elects to terminate the lease, it shall be null and void and of no further force and effect and all obligations of all parties shall discontinue. Lessee shall use its best efforts to obtain studies and approvals during the Initial Due Diligence Period including traffic concurrency to the Land of a number which is sufficient to accommodate all of Lessee's contemplated development of the Premises on a phased basis. If the approvals have not been obtained at the expiration of the Additional Due Diligence Period, then either party may terminate this Lease by giving written notice of termination at which time the Lease shall be null and void and of no further force and effect and obligations of all parties discontinue. Lessor shall fully cooperate in the requirements of any approvals during the Due Diligence Period.

4. TERM.

The initial term of the Lease shall be for a period of fifty (50) years commencing after the expiration of the Due Diligence Period ~~and/or approval by all appropriate parties and agencies of the Master Development Plan or issuance of the Development Order, whichever event is later.~~ Provided Lessee is not in default hereunder, the Lease shall automatically extend for an additional ~~fifty~~

(50) years at the end of each five (5) year period commencing five (5) years after the Effective Date unless notice is given by either party of their intent to not extend the Lease in which case this the Lease will automatically convert to a fixed forty five (45) year Lease ~~after each such five (5) year period and~~ will expire at the end of said ~~fifty (50)~~ forty five (45) year period under the same terms and conditions set forth herein, unless modified by written agreement between the parties. Accordingly, if there is no default or notice to not extend, the Lease shall never be less a fixed forty five (45) year term. The parties acknowledge that this is in consideration of financing for the improvements on the Land.

If Lessee has not received all appropriate approvals of its Master Development Plan, including the approval of Lessor, --Village and all other appropriate agencies, on or before May 1, 2010, then either party may declare the Lease null and void, and upon such declaration, neither party shall have any further obligations to the other under the terms and conditions of this Lease. Lessee's use approval by all appropriate agencies shall be a condition precedent to Lessee's performance under the terms of this Lease. In the event the lease is declared null and void, Lessee shall return property to Lessor in good condition.

Lessee hereby agrees that if it fails to surrender the Land and Premises at the end of the Lease term, as it may be extended herein, or upon any earlier termination of this Lease, Lessee shall be liable to Lessor for any and actual damages which Lessor may suffer by reason thereof, and Lessee shall indemnify Lessor against any and all claims and demands made by succeeding tenants against Lessor, founded upon delay by Lessor in delivering possession of the Land and/or Premises to such succeeding tenant.

5. LESSEE'S USE OF THE PREMISES

5.1. Use of the Premises. The Premises shall be used for the operation of a community college campus wherein students may obtain two (2) year degrees and four (4) year degrees, and graduate degrees, with the Lessee intending to primarily house the baccalaureate programs offered by the Institution at the premises, and ancillary services such as, educational facilities, educational plants and auxiliary facilities as allowed by statute and as deemed necessary by Lessee, in accordance with the Master Development Plan and mission statement of the Lessee and it may also include additional ancillary uses consistent with the Development Order and Master Development Plan, and further may include recreational, civic, and community activities and joint uses as agreed upon by Lessor and Lessee. Lessee shall be entitled to provide ancillary uses customarily provided with centers for college campuses and to authorize the use of the Premises, with or without charge, to other parties provided that such use is for cultural educational, or student support purposes, is authorized by the Lessee, and the use criteria are subject to an agreement of terms with Lessee, and that the use is consistent with the Village's future land use plan for the land, subject to the provision that if any use is to be provided to students by an entity

other than Lessee, the sublease, license or other agreement facilitating the provision of the service to the students, between Lessee and the third party entity shall be subject to review and approval of Lessor, to ensure that is consistent with the terms and intent of this Lease. Lessee shall cooperate with other institutions of higher education as a benefit for the students subject to appropriate Department of Education, regulatory requirements, and compatibility of Joint Uses of Facilities as established by Lessee. The Lessee shall comply with the Village of Wellington's Development Order so long as it is not inconsistent with state statutes or regulations or other mandated requirements, and other approvals which may be granted to Lessee as part of its development of the Land. Lessee shall not use the Land or Premises for any unlawful purpose or purposes. Lessee shall exercise sole control of all educational curriculum programs, functions, services and student ancillary and auxiliary uses consistent with the Development Order and Master Development Plan on the Premises.

5.2. It is the intent of Lessee to continue the existing High School Programs to the extent they remain financially feasible and sufficient demand exists in the discretion of Lessee. The development of the land by Lessor is to supplement and not supplant the services provided by Lessee within the Village and surrounding communities. As a part of the Conceptual Design, and consistent with the Lessee's intent to house its baccalaureate programs on the premise, Lessor shall develop a university partnership center plan and program to be implemented as a part of the Master Plan, which will include efforts to make available on the premises baccalaureate and graduate level degrees from partnership institutions. Compliance with Laws. Lessee shall, throughout the term of this Lease, at Lessee's sole expense, promptly comply with all federal, state and local laws, rules, regulations, codes, and ordinances. Further, Lessee shall comply with all land use approval orders, and any insurance requirements as well as any and all matters as contained in this Lease that are not inconsistent with state statute and regulations, for a state educational institution.

6. CONSTRUCTION OF IMPROVEMENTS

6.1. ~~In order to implement the uses contemplated by this Lease, it shall be necessary for the Lessee-~~ is the intent of Lessee to make improvements to the leased site based upon Green-LEED's certification standards with the level of standards to be determined-agreed upon by Lessee and Lessor. These improvements may be phased in a manner as determined by the Lessee consistent with the Conceptual Design and Master Plan approvals and is represented by the terms herein, depending on the financial -ability and changing educational environment of the Lessee. Prior to instituting any such improvements and prior to submittal for formal approval of a Development Order on the site from the Village in its regulatory capacity, Lessee shall submit and have approved by ~~Village~~Lessor, a Master Development Plan outlining the proposed improvements and the proposed phasing of -such improvements, and

describing the general location and the architectural style of the improvements. It is the intent of Lessor and Lessee that the phased construction will be as follows subject to any changes that may be required which would be agreed upon in writing between Lessee and Lessor. The phased construction schedule is based upon the later of two (2) years after approval by all appropriate agencies, including the Department of Education, or any comprehensive plan, amendments, or DRI or environmental approvals, or approval of the Master Development Plan, or issuance of the Development Order of the Effective Date of the Lease, assuming funding is available and there is no force majeure.

- Construction of Phase I will be completed so that classes will be offered on the premises by the fall semester of 2013 ~~commence within two (2) years of the issuance of the Development Order, above criteria and be completed within two (2) years of commencement of building.~~
- Construction of Phase II will commence within five (5) years of the effective date of the lease. ~~issuance of the Development Order, above criteria.~~
- If Phase I is not timely completed by August 1, 2013, ~~started commenced within two (2) years of the issuance of the Development Order above criteria,~~ the entire leasehold reverts to the Village.
- If Phase II is not timely started within five (5) years of the effective date of the lease ~~issuance of the Development Order the above criteria,~~ all lands not utilized in Phase I shall beyond Phase II ~~revert to the Village immediately~~ Lessor.
- Construction of Phase III shall commence within fifteen (15) years of the effective date of the lease. ~~issuance of the Development Order above criteria.~~ In the event that Phase III is not timely started, then the Phase III lands not utilized in Phases I and/or II, shall revert to the Lessor.
- Failure to timely commence construction of Phases or to timely complete Phase I, shall be a cause for Lessor to terminate the Lease upon written notice to Lessee, provided that the notice of termination for failure to complete Phase I improvements in a timely fashion shall provide a minimum of six (6) months ~~twenty-four (24) months~~ for Lessee to cure the deficiency or failure.

6.2. The general concept and intent upon execution of this Lease for the Phased Development is attached as Exhibit "D". It is agreed that the buildings and improvements to be erected on the Land by Lessee shall be deemed to be, and shall remain, personalty and the sole property of Lessee until such time as this Lease terminates, at which time the Premises shall automatically become part of the realty and become the property of Lessor, subject to any payments or pro-rations contained herein. The parties hereunto understand that the Lessee

shall maintain the Premises in a reasonable condition together with reasonable wear and tear expected.

6.3. As a part of this Master Development Planning process Lessee shall obtain approval for traffic concurrency studies for all phases of the proposed improvements to be approved by Palm Beach County, Village, or any other governmental authority having jurisdiction over the same and applicable zoning and land use criteria.

6.4. Once the Due Diligence has been satisfactorily conducted and Lessor-Village has approved the Master Development Plan, the development can proceed through the College's permitting process, and shall be constructed in accordance with the applicable building code and the Department of Education standards and as provided for in this Lease. If there is a material change to the Master Development Plan which impacts the permitting process, the Lessor shall have the right which shall not be unreasonably withheld, provided the change is consistent with the approved Conceptual Design, to approve such material change. Material change is defined as any change inconsistent with federal, state or local laws, rules, regulations, codes or ordinances or a significant design or density impact including but not limited to a change that requires an amendment to the Village approval Master Plan, as determined by the Village's Planning Director, but does not include a revision made in response to the Lessor.

6.5. Lessee, subject to the terms and conditions of this Agreement and so long as it is not in default hereunder and subject to the following conditions, shall have the right to cause the Improvements to be constructed upon the Land to be used for and in connection with the uses of the Land permitted by Lessee under this Lease. Lessee shall have the right to construct buildings and improvements upon the Land to such extent and of such area as shall comply with all existing federal, state and local laws, rules, regulations, codes, and ordinances.

6.6. Once commenced, the Improvements shall be constructed in accordance with the plans and specifications approved by Lessor and constructed in accordance with the standards and specifications of the Florida Department of Education and all appropriate agencies. All work shall be done in a good, workmanlike manner.

7. APPROVALS TO CONSTRUCT AND OPERATE IMPROVEMENTS; TRAFFIC CONCURRENCY AND CONSTRUCTION OF IMPROVEMENTS.

7.1. Lessee shall be responsible for obtaining all construction funding and other funding necessary for the successful construction and day to day operations of said college campus, otherwise known as the Premises.

7.2. Lessee shall be responsible for obtaining all permits and approvals necessary for the construction and operation of said college campus, including, but not limited to, obtaining all governmental approvals, which shall consist of, but not limited to, traffic, zoning, building, obtaining approvals from any master association or sub-association having jurisdiction over the Land and/or Premises and/or the project, complying with all covenants, conditions, and restrictions affecting the Land and/or Premises and/or the project, and complying with any other matters of record, providing for all on site and off site improvements at its own costs.

7.3. Lessee shall obtain from all contracted firms performing construction work on each Phase on this property, payment and performance bonds, in a minimum amount of 100 percent of the contracted sum for the work, protecting Lessor's and Lessee's interest in the Land and/or Premises and/or improvements, as the case may be, prior to the commencement of any phase of construction contemplated herein by Lessee. Such payment and performance bonds shall be delivered to Lessor no later than thirty (30) days after execution of the principal construction contract. The form of such bonds shall be in accordance with F.S. 255.05. Lessee shall not commence any construction until such time as the bonds are in place. Lessee shall be required to record such bonds of record as required by law.

7.4. Prior to commencement of construction of the Improvements of the Land in total or in phases, Lessee shall furnish to Lessor a construction contract providing for the completion of the construction of the Improvements on the Land, including all off-site work in accordance with the ~~plans~~ and Master Plan specifications ~~therefore~~, and Development Order, as approved in accordance with this Lease Agreement.

7.5. Upon the commencement of construction by Lessee of the Improvements on the Land and any agreed upon off-site Improvements, Lessee shall be required to have all Improvements, including required and agreed upon off-site Improvements fully and finally completed as provided in this Lease and the Master Development Plan. Proof of such completion of construction shall be evidenced by a certificate of occupancy issued by such governmental authorities having jurisdiction over the Land, project, and Premises and Improvements.

7.6. Upon the completion of each Phase of the construction of the Improvements on the Land, Lessee, at its sole cost and expense, shall furnish to Lessor the following:

7.6.1. A certificate from the architect/engineer of record certifying that the construction has been completed substantially in accordance with the approved plans and specifications.

7.6.2. A final contractor's affidavit in a form reasonably approved by Lessor evidencing that all sub-contractors, materialmen and the contractor have been paid in full for the Construction of the Improvements on the Land and for all off-site Improvements. An Affidavit executed under penalty of perjury from the Lessee evidencing that all consultants and design professional and others associated with the project and construction have been paid in full.

7.6.3. A true copy of the permanent certificate of occupancy for the Premises issued by such governmental authorities having jurisdiction over the Land, Improvements and Premises.

7.6.4. A complete set of surveys and as-built plans showing the Improvements located on the Land.

7.6.5. A true copy of all other permits and certificates required from all governmental authorities for the operation of the Premises for Lessee's use of the Land and Premises.

7.6.6. A complete set of contract documents, including the architect of records contract.

7.6.7. A complete set of all warranties and guarantees.

7.6.8. A complete set of all manuals for the equipment located on the Premises with manufacturer's information and a list of such equipment.

7.6.9. A list of all major subcontractors who worked on the Improvements and Premises.

7.6.10. Lessee shall have the right, from time to time, to expand, relocate, replace, remodel, or renovate the Improvements on the Land. Any such expansion, relocation, replacement, remodeling, or renovation shall be subject to (1) submitting for Lessor's review and approval of Lessee's plans and specifications; (2) obtaining such approvals from such governmental authorities having jurisdiction over the same; (3) complying with all matters recorded of record affecting the Land, Premises, and/or Improvements; (4) obtaining Lessor's overall approval, which approval may not be unreasonably withheld; reasonable approval may be withheld if the action is inconsistent with the Master Development Plan; (5) agreement as to Lessor and Lessee as to the commencement and completion dates for the work, which shall be reasonable; (6) Lessee complying with all insurance requirements of Lessor and bonding requirements and any such other requirements Lessor may request of Lessee; (7) after commencement of construction, Lessee shall diligently proceed with such construction to completion in accordance with the construction schedule approved by Lessor and in accordance with all of Lessor's terms and conditions. The terms and conditions herein shall be applicable to all phases of the project.

8. RENT.

8.1. Base Rent. Lessee covenants and agrees to pay to Lessor a base Rent (the "Base Rent"), which is the sum of Ten Dollars (\$10.00) per annum, payable commencing upon the expiration of Due Diligence or approval of the Master Development Plan, whichever is earlier, and continuing on the first business day of each and every year thereafter for the entire term of this Lease. (Thereafter for the remaining twenty-five years of the initial lease term and any subsequent terms or extensions of the lease, the Base Rent shall be One Million Dollars (\$1,000,000.00) per annum, subject to a compounded three percent (3%) annual increase beginning in year twenty seven (27) of the lease and annually thereafter, with such Base Rent payable in advance on the first business day of each year the lease remains in effect.

8.2. Additional Rent. As additional consideration Lessee shall design, develop, build, construct and maintain a recreational element (Recreational Joint Use Facilities) ~~the preliminary concept of which includes a minimum of three (3) multi-purpose fields and one (1) restroom/-concession building as set forth on Exhibit "B".~~ Lessee shall maintain the recreational elements as per Exhibit "C" and in accordance with Community College standard maintenance procedures, unless the standards are otherwise modified by written agreement of the parties and shall build, develop and construct and maintain Recreational Joint Use Facilities, said Facilities listed on Exhibit "B". Facilities and the access roads will be constructed by August 1, 2013 ~~within two (2) years of the issuance of the Development Order Phase I.~~ The Usage of the Recreational Joint Use Facilities shall be controlled by the Recreational Joint Use Facilities Agreement (Exhibit "C"). Lessee shall maintain the Recreational Joint Use Agreement Facilities in accordance with Lessee's-the Recreational Joint Use Facilities Agreement (Exhibit "C") ~~standard maintenance procedures~~ unless the standards are otherwise modified by written agreement of the parties. Lessee's breach of obligation to timely complete the Recreational Joint Use Facilities shall be cause for Lessor to terminate the Lease, provided however that before the Lease is terminated for such cause, Lessor shall have given Lessee at least one hundred and eighty (180) days notice and an opportunity to cure the deficiency or failure.

8.3. Place of Payment. Lessee shall pay all Rent to Lessor in lawful money of the United States of America, at Lessor's address as shown herein, or at such other address as Lessor shall designate from time to time in writing.

8.4. Platting. Lessee shall cause the Land to be platted in accordance with the Village's Land Development Regulations. As a part of the platting process Lessee shall identify the Village's reuse water storage, lake and drainage lake adjacent to any proposed development as well as access and maintenance easements surrounding those water bodies. During the term of the Lease Lessor shall be responsible for maintaining the reuse water storage lake

and Lessee shall be responsible for maintaining the drainage lake adjacent to any proposed development along with all other drainage facilities constructed as a result of the Improvements built by Lessee.

8.5. Property Maintenance. Any undeveloped Land that abuts either an adjacent development or a roadway as set forth on a certain certified survey once the Master Development Plan has been approved, shall be cleared for a distance of at least sixty (60) feet from the adjacent property line or road right of way or easement and Land that has been cleared or otherwise altered from its natural condition shall be maintained in accordance with the in accordance with the standards set forth in Exhibit "E", to the extent that such standards exceed the minimum requirements that may be found in the Village's then existing Code of Ordinances. If their exist Village Code requirements that exceed the standards set forth in Exhibit "E", Lessee shall meet or exceed the Code requirements. ~~— Lessee's general maintenance procedures, or Master Development Plan approval criteria.~~ Lessee shall maintain the buildings constructed on the Land in good condition and repair at all times, damage by ordinary wear and tear and casualties beyond its control excepted. Lessee shall promptly make any and all repairs to the buildings that may be necessary or desirable. Lessee shall be responsible for installation and maintenance of landscaping.

9. TAXES AND UTILITY EXPENSES.

9.1. Lessee shall pay for the connection of utilities to the site in accordance with the plans and specifications for the Improvements. Lessee shall be solely responsible for any expenses pertaining to utilities on site and their offsite impacts on the utility system. Lessee shall be responsible for any special or general assessments, intangible taxes, ad valorem taxes (if any), water charges, drainage fees, sewer charges, excise taxes, levies, license, and permit fees and any other charges that pertain to the Premises to the extent they are applicable by law to Lessee.

9.2. Tax Contests. Lessee, or its designees, shall have the right to contest the amount of or validity of any such Taxes, Utility Expenses, assessments, or impositions by appropriate legal proceedings, diligently pursued, provided that (a) Lessee shall first make all contested payments, under protest if it desires; or (b) Lessee shall have furnished such security, if any, as may be required in the proceedings and as required by Lessor; and (c) neither the Land nor the Improvements, nor any part thereof, nor interest therein would be in any danger of being sold, forfeited, lost, or interfered with; and (d) all expenses incurred in connection with such proceedings shall be paid by Lessee.

9.3. Utility Charges. Lessee, upon commencement of this Lease and Lessee's use of the Land shall pay or cause to be paid all charges for water, electricity, light, heat or power, telephone or other communication service(s)

used, rendered or supplied upon or in connection with the Land and/or Premises and also any charges or expenses in connection with any alterations, additions, installations, or changes required or desired in connection with the supplying or using of such utilities or services or substitutes therefore throughout the term of this Lease, and to indemnify Lessor and save it harmless against any liability or damages on such account. Lessee shall be responsible to obtain all off-site and on-site Improvements and services which are necessary for the development of the Land and Premises for Lessee's use of the Land and Premises as contemplated herein. Lessee shall, at its sole expense, procure any and all necessary permits, licenses, or other authorizations and approvals required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying all utility and other service to the Premises. Lessee shall, at Lessee's expense, obtain all necessary sewer and water and other utility services to the Land and Premises, including, but not limited to, surface water drainage and other such matters necessary for Lessee's intended use of the Land and Premises. ~~Notwithstanding anything to the contrary contained in this Section 9.3, Lessor shall, at its sole cost and expense, bring all utilities required for Lessee's project to the property line of the Land as determined by Survey.~~

10. REPAIRS AND MAINTENANCE OF THE PREMISES.

10.1. Repairs. Lessee shall, throughout the term of this Lease, at Lessee's sole expense, maintain the Premises, including, without limitation, the Improvements, equipment, and fixtures situated therein, and the parking facilities situated therein, and all Improvements contained within the Land in good order and condition. Lessee shall faithfully perform any and all obligations and duties required to be performed by Lessor under any and all easements and agreements of record affecting the Premises or Land or the property. Lessee shall promptly, at Lessee's own expense, make all necessary repairs, renewals, and replacements, interior and exterior, structural and nonstructural of, or to the Premises, including, but not limited to, roofs, foundations, and appurtenances thereto, all sidewalks, grounds, landscaping, lakes, parking facilities, plazas, areas, alleys, and curbs, water, sewer and gas connections, pipes and mains, all other fixtures, machinery, and equipment as contained within the property boundary lines of the Land or as otherwise directly utilized by the Lessee such as, but not limited to, its offsite Improvements. All repairs or replacements shall be made in compliance with all applicable laws, rules, and regulations of such governmental and other authorities having jurisdiction over the Land and Premises. Nothing contained in this Lease shall impose on Lessor the obligation to make any repairs or expend any monies for the maintenance of the Premises.

10.2. Premises Kept Clean. Lessee shall keep and maintain all portions of the Premises and the sidewalks and other improvements in a clean and orderly condition, free of accumulations of dirt, rubbish, and debris.

10.3. Removal of Dangerous Conditions. Lessee shall during the term of this Lease, at Lessee's sole expense, do all things necessary to remove any dangerous condition from time to time existing on the Premises, including (without limiting the generality of the foregoing) promptly taking appropriate measures to prevent or repair any erosion, collapse, or other unstable condition on the Premises.

10.4. Waste. Lessee covenants not to do or suffer to be done any waste, damage, or injury to the Premises or any machinery, fixtures, or equipment situated thereon.

10.5. Expiration of Lease Term. Lessee, at its own expense, covenants and agrees to deliver to Lessor, upon the expiration of this Lease, the entire Premises, including all Improvements constructed thereon, in good state of repair and in good useable condition, ordinary wear and tear expected, and free of the leasehold or other interest or lien of any other party therein.

11. CONSTRUCTION LIENS.

11.1. Lessee shall not suffer or permit any construction liens to be filed against Lessor's interest in the Premises nor against Lessee's interest in the Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or anyone other than Lessor having a right to or lawfully claiming to have a right to possession of the Premises or any part thereof as a result of an agreement with, or the assent of, Lessee. Nothing in this Lease shall be construed as constituting the consent of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, sub-subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific Improvement, alteration, or repair of or to the Land or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against Lessor's interest in the Premises. Moreover, Lessee shall not be deemed to be the agent of Lessor, so as to confer upon any "Lienor" (as defined in the Florida Construction Lien Law, Florida Statutes, Chapter 713, as it may be amended from time to time) a construction lien upon Lessor's estate in the Land. If any such construction lien shall at any time be filed against Lessor's estate in the Land or any part thereof, Lessee shall immediately notify Lessor thereof and shall cause the same to be discharged of record or bonded or otherwise secured to the satisfaction of Lessor within twenty (20) days after the date Lessee has knowledge of such filing. If Lessee shall fail to discharge such construction lien within such period, then in addition to any other rights or remedies of Lessor and as provided in law and equity, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or bonding, and in any such event, Lessor shall be entitled, if Lessor so elects, to compel the

prosecution of an action for the foreclosure of such mechanic's lien by the Lienor and to pay the amount of the judgment, if any, in favor of the Lienor with interest, costs, and allowances. However, Lessee shall not be required to pay or discharge any such construction lien so long as Lessee shall in good faith proceed to contest the same by appropriate proceedings; provided, however, that Lessee shall give notice in writing to Lessor of its intention to contest the validity of such lien and shall furnish cash or a surety bond of a company satisfactory to Lessor in an amount sufficient to pay such contested lien claim with all interest thereon and costs and expenses, including reasonable attorneys' fees as estimated by Lessor to be incurred in connection therewith.

11.2. Lessor and Lessee recognize and acknowledge that Chapter 713 Construction Lien Law does not apply to construction of this educational facility.

11.3. Nothing contained herein in this Lease shall constitute a waiver of acceptance or acknowledgement that Chapter 713 Construction Lien Law applies to the construction of this educational facility. However, in the event of any improper filing of a lien, Lessee shall assume the responsibility of obtaining removal of the lien and Lessor shall fully cooperate in such event.

12. INSPECTION.

Inspection by Lessor. Lessor or its agents shall have the right to enter the Premises, during usual business hours upon reasonable notice not less than fifteen (15) days prior written notice, and with the accompaniment of a designated representative of Lessee for the purpose of inspecting the same.

13. LESSOR AND LESSEE LIABILITY.

Lessor and Lessee acknowledge and agreed that each party has the protection of sovereign immunity as it may be amended from time to time by Florida Statute 768.28. Lessor and Lessee agree that neither shall waive nor fail to assert sovereign immunity, to the extent allowable at law, in any matter for which Lessor or Lessee would otherwise be entitled to assert such defense.

14. DEFAULT PROVISIONS.

Events of Default. In the event of default beyond any contractual extension or grace period by Lessor or Lessee which is a failure to perform in accordance with the terms of this Lease, the Lessor or Lessee can terminate the Lease and seek damages or seek specific performance and each shall have available all remedies as are according to law and-or equity and-or as provided for in this Lease. Except as otherwise set forth herein, if there is an event of default, each party shall give to the defaulting party a notice of default with an opportunity of sixty (60) days to cure or as reasonably extended to allow cure period required by circumstances and, in the event of failure to cure, the party not in default can provide a notice of termination of the Lease and seek such damages as are available in equity or at law and-or as provided in this Lease.

15. REMEDIES.

15.1. Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to either party herein or at law or in equity or by statute shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to either party may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the party exercising such remedy. No delay or omission of either party to exercise any right or power arising from any default by the other party shall impair any such right or power, nor shall it be construed to be a waiver of any such default or any acquiescence therein.

15.2. Non-Waiver. The failure of a party to insist upon the strict performance of any of the covenants, conditions, or agreements of this Lease in any one or more instances shall not be construed as a waiver or relinquishment in the future of such party's right to enforce any such covenants, conditions, and agreements. No delay or omission by a party in the exercise of any rights or powers arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or acquiescence therein.

16. ASSIGNMENT AND SUBLEASES.

16.1. Conditions of Assignments. Lessee shall not assign this Lease without the prior written consent of Lessor, which consent may not be unreasonably withheld. The consent by Lessor to any assignment shall not constitute a waiver of the necessity for such consent for any subsequent assignment. Lessor and Lessee acknowledge that Lessee may sublease the Property for purposes as determined by Lessee in its sole discretion necessary for the implementation of operating the college campus or operation of Lessee and ancillary services required for their or their students support. Any such subleases would be subject to the terms of this Lease.

16.2. Certificates. Lessor shall, from time to time, within thirty (30) days after written request by any permitted mortgagee of the Premises, certify in writing to such party:

16.3. That this Lease is in full force and effect in accordance with the provisions herein set forth and unmodified, or if modified, stating all modifications thereto.

16.4 The Lease has not been assigned, there are no liens, encumbrances, assignments or sales of the Property that is subject to this Lease as of the date of the Lease.

16.5. Such other matters as may be reasonably requested by Lessee.

17. SALE AND FEE MORTGAGES.

Certificates. Lessee shall, from time to time, at reasonable intervals, within thirty (30) days after written request by Lessor or by any prospective purchaser of the Premises, any prospective fee mortgagee, or any other party, certify in writing to such party:

(a) This Lease is in full force and effect in accordance with the provisions herein set forth and unmodified or, if modified, stating all modifications thereto.

(b) The date to which Rent, Taxes, and Utility Expenses for the Premises have been paid.

(c) Whether or not, to Lessee's knowledge, Lessor is in default in any respect hereunder and, if so, specify each such default of which Lessee has knowledge.

(d) The commencement and expiration dates of this Lease.

(e) Any other matters as may be reasonably requested by such party referenced above.

18. SALE OF THE FEE SIMPLE ESTATE.

~~18.1. Lessor Right of Sale. There shall be no sale or assignment or transfer of Lessor's interest in the Land or the terms of the Lease for the duration of this Lease without the express written consent of Lessee and under such terms and conditions as Lessee requires, particularly in light of the fact that these Improvements are constituted in part or in whole by public funds~~ Lessor Not Liable After Sale of Fee. The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner at the time in question of the fee title to the Premises and/or the reversionary interest in the Premises, and upon the transfer or transfers of the title to such fee and/or such reversionary interest, Lessor shall be automatically relieved of all liability with respect to the performance of any obligations on the part of Lessor contained in this Lease thereafter to be performed, provided that such release from liability shall become effective only when the grantee or assignee shall expressly assume, subject to the limitations of this Section 19, all of the terms in this Lease to be performed on the part of Lessor, it being intended hereby that the obligations contained in this Lease on the part of Lessor shall be binding on Lessor, its successors, and assigns, only during and in respect of their respective successive periods of ownership of the fee simple interest in the Premises and/or the reversionary interest in the Premises.

18.2. Lessee reserves the right to terminate the Lease in the event that the Land is deemed surplus property in accordance with statute and regulatory procedures in which event the Land the Improvements would revert to Lessor.

19. LEASEHOLD MORTGAGES.

Mortgages Permitted. Lessor and Lessee recognize that State PECO funds or bond financing, state financing, or private financing may be utilized to construct the Improvements of the Leasehold Improvements on the Land. Performance by Lessee is subject to the financing of each Phase of the Project for the construction of the Leasehold Improvements and their maintenance, or remodeling, renovation, or reconstruction after casualty. Lessee may mortgage, pledge, or encumber the leasehold interest and personal property and Improvements of Lessee, but not the fee interest of Lessor without the prior written consent of Lessor, ~~which will not be unreasonably withheld.~~ Any financing of the Land or Premises shall disclose the Lessor's fee simple interest in the Land, ~~and if required for financing, Lessor shall subordinate its fee simple interest for the duration of any such financing and shall execute and provide any documentation as may be requested or required by Lessee or any financing party during the term including modifications, extensions, and amendments as may be required from time to time. Failure to comply shall be a default of Lessor.~~

20. INSURANCE.

20.1. Insurance upon the Land and Improvements shall be obtained by Lessee for the duration of this Lease and the amounts established in accordance with the terms and conditions of insurance as provided through the Florida Community College Risk Management Consortium, provided that the coverages are acceptable to Lessor's Risk Manager, and shall name Lessor as co-insured or a certificate holder in accordance with insurance requirements. As to the Improvements the insurance shall cover at a minimum the Improvement replacement value. The claims process shall be as established under the insurance provider.

20.2. No construction of Improvements shall be commenced until Lessee has delivered to Lessor the ~~original~~ proof of required insurance information.

20.3. All insurance required above shall also provide for such Financial Institutional Securities interests should there be a mortgage on the leasehold estate.

21. DESTRUCTION.

In the event of destruction of the Improvements or any portion thereof for which insurance funds shall be payable and ~~as often as~~ such insurance funds shall have been paid to Lessee, the Lessee will use the funds to fix the damaged Improvement/building to the extent feasible as determined jointly by the Lessee and the Lessor. Any repair or Improvements shall be consistent with applicable

State Department of Education Code requirements and consistent with the terms of this Lease.

22. CONDEMNATION.

In the event that the Premises, or any part thereof, shall be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain or private purchase thereof, the parties hereto agree that the following provisions shall apply:

(a) Lessor shall receive that part of any award or compensation which is paid as a result of any such taking which is attributable to the value of Lessor's fee interest in the Premises, together with its reversionary interest, any severance damages, and other damages as shall be determined by any court or courts of competent jurisdiction.

(b) Lessee shall receive any portion of an award or compensation which is attributable to the value of its Leasehold Estate. Lessee shall also be entitled to all portions of such award which are attributable to any Improvements placed upon the Land (less Lessor's reversionary interest in the Premises, which is the sole property of Lessor) by said Lessee, as determined by any court or courts of competent jurisdiction.

(c) If all or so much of the Premises be taken so that the remainder of the Premises is not usable by Lessee pursuant to the terms and provisions of this Lease, then, and in that event, this Lease shall thereupon be terminated as between Lessor and Lessee, and any award or compensation received for the entire taking of the Premises, including Improvements thereon, shall be divided between the parties hereto, as provided hereinabove.

23. NOTICES.

All notices and other communication between the parties hereto, which are permitted or required by the provisions of this Lease, shall be sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses shown below. The effective date of all notices or communications shall be the date of receipt, as shown on the return receipt, or the date upon which delivery is refused, as shown on the return receipt, or as certified by the postal authority.

If to Lessor:

Acme Improvement District, a Dependent
Special District of the Village of Wellington
1400 Greenbriar Boulevard
Wellington, Florida 33414-7699
Attn: Village Manager

With a copy to:

Jeffrey S. Kurtz, Village Attorney
Northpoint Corporate Center
701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407

If to Lessee:

The District Board of Trustees of
Palm Beach Community College
4200 Congress Avenue
Lake Worth, Florida 33461
Attn: _____

With a copy to:

Gibson & Loggins, P.A.
319 Clematis Street, Suite 800
West Palm Beach, Florida 33401
Attn: Kathleen J. Loggins, Esq.

24. AMENDMENT TO LEASE.

The provisions of this Lease may not be amended, supplemented, waived, or changed orally, but only by written instrument duly executed by Lessor and Lessee.

25. RELATIONSHIP OF THE PARTIES.

The parties hereby agree that it is their intention to create only the relationship of landlord and tenant, and neither this Lease nor any term, provision, payment, or right hereunder shall in any way or for any purpose constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint venturer or a member of a joint enterprise with Lessee, nor shall this Lease nor any term or payment required herein confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business. Further, Lessee shall not be deemed an agent or representative of ~~the Village of Wellington~~/Lessor for any purposes or in any manner whatsoever.

26. LEASE FOR BENEFIT OF PARTIES HERETO.

Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than Lessor, Lessee, or their officers, directors, or incorporators, any right, remedy, or claim under or by reason of this Lease or any covenant, condition, or stipulation thereof; and the covenants, stipulations, or agreements contained in this Lease are and shall be

for the sole and exclusive benefit of the aforementioned parties and their permitted successors and assigns.

27. RECORDING OF MEMORANDUM OF LEASE.

A memorandum of this Lease, in proper form for recordation, setting forth the existence and principal terms of this Lease, shall be recorded in the public records of Palm Beach County, Florida, and each party will join in the execution of such a memorandum and will take such further action as may be necessary to effect such recordation. Lessee shall pay for the recording of such memorandum and subsequent notice of termination.

28. QUIET ENJOYMENT.

Lessor agrees that Lessee, upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, shall (subject to Lessor's rights specified in this Lease) lawfully and quietly occupy the Premises during the term of this Lease as against Lessor or any persons claiming under Lessor. Lessor and Lessee agree that Lessee shall be entitled to the right of continued possession upon attornment in the event of any transfer or assignment by Lessor (which requires the consent of Lessee) allowing Lessee to remain in peaceful possession of the Land as long as it meets all of the terms and conditions of the Lease.

29. NOTICE OF COMPLAINTS OR SUITS.

Each party shall promptly notify the other of any Complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Lease. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

30. UNDERSTANDINGS AND AGREEMENTS.

All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Agreement.

31. SEVERABILITY.

If any of the provisions of this Lease, or any article, section, clause, phrase, word, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Lease, and of the application of any such

provision, action, sentence, clause, phrase, or word, in other circumstances, shall not be affected thereby.

32. NO MERGER.

There shall be no merger of this Lease nor of the Leasehold Estate created hereby with the fee simple estate in the Land or the reversionary interest in the Premises or any part thereof by reason of the fact that the same person, firm, or entity may acquire or own or hold, directly or indirectly, (a) this Lease or the Leasehold Estate, created hereby or any interest in this Lease or in such Leasehold Estate and (b) the fee estate in the Land or any part thereof or any interest in such fee estate, or in the reversionary interest in the Premises, and no such merger shall occur unless and until Lessor, Lessee, and the holders of all fee mortgages, if any, encumbering the fee interest in the Land, and the holders of all leasehold mortgages, if any, encumbering this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

33. CAPTIONS.

The captions used in this Lease and exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

34. GOVERNING LAW AND VENUE.

This Lease shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in Palm Beach County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

35. TIME OF THE ESSENCE.

Time shall be of the essence with respect to each provision herein which requires performance by either party upon a specified date or within a specified time period.

36. DRAFTER THEORY.

This Lease shall not be construed against the party who drafted the same as all parties to this Lease have consulted legal and business experts of their choosing to review the adequacy of the same.

37. CONSENTS AND APPROVALS.

All consents and approvals which may be given under this Lease will, as a condition of their effectiveness, be in writing. The granting of any consent or approval by Lessor or Lessee to perform any act requiring Lessor's or Lessee's consent or approval under the terms of this Lease, or the failure on the part of Lessor or Lessee to object to any such action taken shall not be deemed a waiver of the right to require such consent or approval for any further similar act by Lessor or the Lessee, and each party hereby expressly covenants and warrants that as to all matters requiring approval or consent under the terms of this Lease to secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver of the requirement to secure such consent or approval.

38. MISCELLANEOUS.

38.1. Except as otherwise expressly provided in this Lease, there will be no merger of this Lease of the Leasehold Estate created hereby with the fee estate, or any part thereon by reason of the same person or entity acquiring or holding, directly or indirectly, this Lease of the Leasehold Estate created hereby or any interest in this Lease or in such Leasehold Estate as well as the fee estate.

38.2. This Agreement is binding upon the parties hereto, their heirs, successors, and assigns.

38.3. Should any litigation be brought in connection with this Lease, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

38.4. Nothing contained in this Lease shall:

(a) Operate as a waiver of any right or authority of Lessor or Lessee under any applicable statute, law, ordinance, regulation or charter, or bind or require Lessor or Lessee to act in any manner in connection with any regulatory requirement or action mandated by statute or law and each party shall be free to exercise all statutory regulatory powers.

39. No member, official, representative, or employee of the Village of Wellington/Lessor shall be personally liable to Lessee or any successor in interest, in the event of any default or breach by the Village of Wellington/Lessor or for any amount which may become due to Lessee, or its successors, and/or assigns or on any obligations under the terms of this Lease.

40. Nothing in this Lease shall be construed so as to confer upon any other party the rights of a third-party beneficiary.

41. INDEMNIFICATION.

41.1. ~~_____~~ Lessor and Lessee shall each hereby agree to indemnify and save hold harmless each other's agents, employees, officers, and Board members for liability, from and against any and all losses, claims, demands, matters, costs, suits, damages, judgments, and expenses of whatsoever kind or nature, including attorney's fees arising during the term of this Lease, for limited to any personal injury, loss of life, or damage to property sustained by any person, firm, corporation, or other entity, in or about the Premises, including, without limitation, parking areas, and adjacent sidewalks or streets or arising from any act of negligence, gross negligence, or wanton acts of either party or any of their agents, contractors, servants, employees, licensees, or invitees, arising out of each party's respective uses of the Property, and Lessor and Lessee shall each assist the other in the defense of any action. The Indemnification herein is subject to Florida Statutes 768.28. Further Lessee acknowledges that Lessor cannot indemnify Lessee for matters arising pursuant to contract as they are precluded by its insurance carrier.

~~_____~~ 41.2

~~_____~~ ~~In the event of a challenge of Lessor's authority to enter into this Lease, Lessor shall defend any such action subject to terms acceptable to the Lessee and Lessee's title insurer. Lessee shall assist and cooperate with Lessor in any such action and including contributions to the defense to the extent allocation or budgeted funds are available and consistent with the lawful expenditure of such funds by Lessee. In the event of a legal challenge to the Lessor and or Lessee's~~

entry into the lease, and/or any subsequent development orders related to the use and plan for the College, the Lessee agrees to defend, indemnify, and hold harmless the Lessor and the Village, their employees, and representatives from any and all claims, challenges and liabilities which the Lessor or Village becomes liable for by virtue of its execution of lease, including all attorney's fees and court costs, including fees of appeals, arising out of or connected with any administrative or judicial proceedings seeking to challenge or overturn the propriety and/or correctness of the Parties or in entering into the lease/or granting any development approvals or actions taken at the request of the Lessee in furtherance of their petition(s).

41.3. Environmental Indemnification. Lessee agrees to indemnify and hold Lessor harmless from any and all environmental matters, claims, actions, losses and or judgments or other matters which arise from the Lessee's use of the Land which are not otherwise the responsibility of Lessor

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IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

ATTEST:

LESSOR:

ACME IMPROVEMENT DISTRICT, a
Dependent Special District of the
VILLAGE OF WELLINGTON, a
Florida municipal corporation

By: _____
Awilda Rodriguez, Board Secretary

By: _____
Darell Bowen, President

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Dated: _____

By: _____
Jeffrey S. Kurtz, Board Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared _____, who produced as identification a _____ Driver's License, showing him to be the person described in and who executed the foregoing instrument as President of the Board of Supervisors of the ACME IMPROVEMENT DISTRICT, a Dependent Special District of the VILLAGE OF WELLINGTON, a Florida municipal corporation, and did acknowledge before me that he executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public

State
of _____

My commission expires: _____

LESSEE:

THE DISTRICT BOARD OF
TRUSTEES OF PALM BEACH
COMMUNITY COLLEGE, a
political subdivision of the state of
Florida

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

By: _____

Name: _____

Title: _____

Dated: _____

By: _____

Name: _____

Title: _____

Dated: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared _____, who produced as identification a _____ Driver's License, showing him to be the person described in and who executed the foregoing instrument as _____ of PALM BEACH COMMUNITY COLLEGE, a DISTRICT BOARD OF TRUSTEES OF PALM BEACH COMMUNITY COLLEGE, a political subdivision of the State of Florida and did acknowledge before me that he executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

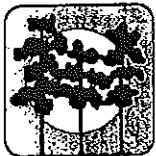
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public

State
of _____

My commission expires: _____
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Tab 5



VILLAGE OF WELLINGTON

Village Council
Darell Bowen, Mayor
Dr. Carmine A. Priore, Vice Mayor
Lizbeth Benacquisto, Councilwoman
Matt Willhite, Councilman
Howard K. Coates, Jr., Councilman

Village Manager
Paul Schofield

ADMINISTRATIVE TRANSMITTAL

DATE: April 3, 2009

TO: ☒ BOWEN
☒ PRIORE
☒ BENACQUISTO
☒ WILLHITE
☒ COATES

FROM: Paul Schofield

CC: Senior Staff
Awilda Rodriguez, Village Clerk
Jeffrey Kurtz, Village Attorney

RE: Revised Draft of Lease Provided By PBCC's Attorney

DISTRIBUTED TO ALL APPLICABLE PERSONS ON: 4/6/09		
COUNCIL	MANAGER	
CLERK	ATTORNEY	STAFF SN
ADDRESSED TO ALL COUNCIL		
ADDRESSED TO		
LOG NO:		

We received the attached draft from PBCC this afternoon. I have also attached a copy of the transmitting e-mail.

Paul Schofield

From: Gibson and Loggins [gibslog@bellsouth.net]
Sent: Friday, April 03, 2009 5:04 PM
To: jeff@torcivialaw.com; Jeffrey S. Kurtz; Paul Schofield
Subject: DRAFT PBCC/Wellington Lease
Attachments: cm2510_20090403_160442.pdf

Gentlemen:

Based upon our last meeting of March 24, 2009, attached please find draft revisions and draft exhibits that we have discussed. This is a blacklined version as discussed with Mr. Kurtz and attempt to incorporate the revisions discussed at that meeting. Based on my last phone call with Mr. Kurtz of a day or two ago, any comments the lessor had relative to the prior version would be delivered to us once this version was delivered to the Lessor and accordingly are not incorporated. Please review this draft carefully.

It is important to note that these revisions are solely based upon the comments at that meeting and they **have not** been reviewed or approved by either the College staff or the Board of Trustees of the Community College and that we are issuing this draft solely for the purposes of enlisting comments and for review and discussion purposes.

If you have any questions, please advise.

Kathleen J. Loggins, Esq.

LEASE

THIS LEASE is entered into this _____ day of _____, 2009, by and between Acme Improvement District, a Dependent Special District of the **VILLAGE OF WELLINGTON**, whose address is 14000 Greenbriar Boulevard, Wellington, Florida 33414 ("Lessor or Landlord"), and The District Board of Trustees of Palm Beach Community College, a Political Subdivision of the State of Florida ("Lessee or Tenant").

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WITNESSETH:

WHEREAS, Lessor is the fee simple owner of that certain unimproved real property more particularly described on Exhibit "A" ("Land") attached hereto, to be verified by a survey certified to and acceptable to the Lessee, and appropriate title insurance companies, and shall be the property leased to Lessee; and

WHEREAS, Lessee has submitted to Lessor a proposal to use the Premises as a college campus in accordance with applicable statutes, regulations, and its mission statement as may be revised; said campus to be built in three (3) separate Phases as defined and agreed upon by the parties on such terms and conditions provided for herein.

WHEREAS, Lessee and Lessor agree that a portion of the Land consisting of Recreational Joint Use Facilities and other such Land as may be designated between the parties shall be subject to a Recreational Joint Use Facilities Usage Agreement to define the maintenance responsibilities, liabilities, and hours of uses relative to the use of the athletic fields, to be agreed upon between the parties, both as generally set forth on Exhibits "B" and "C".

WHEREAS, Lessor has considered the proposal of Lessee and has determined that the proposal submitted by Lessee is in the public interest; and

WHEREAS, Lessor has determined that the construction and use by Lessee of the proposed property for an education facility would provide substantial value to the citizens of Lessor and surrounding communities; and

WHEREAS, Lessee and Lessor desire to enter into this Lease with respect to the property, and Lessee desires to make certain Improvements thereon subject to the terms and conditions more particularly described herein below; and

WHEREAS, pursuant to its Resolution _____, Lessor has approved entry into this Lease on the terms and conditions as more particularly set forth therein and herein below.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration and the promises and mutual covenants and agreements set forth herein, Lessor and Lessee hereby agree as follows:

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The above recitals are true and correct and are incorporated herein by reference. **DEFINITIONS.** As used herein, unless the context requires otherwise:

1.1. **"Development Order"**. The Development Order shall set forth the specifications and criteria for development of the Land in accordance with the terms of this Lease and in accordance with the Comprehensive Plan and Land Use Development Regulation of the Village of Wellington as well as the required approvals of all parties and agencies with jurisdiction to impose development criteria, including at local, district, and state levels and with all approval of all parties to this Lease. The Development Order shall encompass all three (3) Phases of the Land Improvements.

1.2. **"Due Diligence"**. Due Diligence shall afford Lessee the opportunity to fully review all applicable traffic and environmental use, zoning, and other developmental approval criteria including Village, county, district, and state criteria that may be required to approve the Master Development Plan and Due Diligence shall commence effective as of the Effective Date.

1.3. **"Effective Date"**. The Effective Date of the Lease shall commence from the date of the last party to sign this Lease, including appropriate authorizations and approvals.

1.4. **"Financial Institution"** means a bank, savings and loan association, insurance company, or mortgage company or bond financing institution or trustee or bond holder in compliance with such other terms as provided for in this Lease, holding a first mortgage or security interest on the leasehold interest (with subordination by Lessor) and a secured lien on Lessee's tangible personal property as recorded in Palm Beach County, Florida.

1.5. **"Improvements"** shall mean certain buildings (the "Buildings"), parking areas, and other related improvements hereafter constructed by Lessee for the conduct and operation of a college in accordance with applicable federal, state and local law, and local laws, rules, regulations, codes and ordinances together with the Master Plan and Mission Statement of Lessee and ancillary uses as determined by Lessee and other uses permitted herein as reasonably approved by Lessor.

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1.6. **"Land"** means the real property located in the Village of Wellington in Palm Beach County, Florida, consisting of approximately sixty two (62) acres which is subject to this Lease, being more particularly described in Exhibit "A",

with all title exceptions depicted thereon, to be verified and properly certified to Lessee evidencing all record title conditions, easements of record, easements or encroachments that are visible upon inspection of the property, all properly certified to Lessee and the appropriate title company, and verifying that no title conditions existing will hinder or prohibit use as defined herein and with sufficient access for the Use by Lessee.

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1.7. "Lease" shall mean this instrument and all exhibits attached hereto, as same may be amended from time to time.

1.8. "Leasehold Estate" shall mean Lessee's interest in the Land under this Lease and all easements and rights appurtenant thereto.

1.9. "Lessee" shall mean the District Board of Trustees of Palm Beach Community College, a Political Subdivision of the State of Florida.

1.10. "Lessor" shall mean Acme Improvement District, which was initially authorized as an independent special district pursuant to Chapter 298 Fla. Stat., but is now a dependent district of the Village of Wellington, Florida, and is the fee simple owner of the Land. As a dependent district it is governed by the Wellington Village council with its operations administered by the Village of Wellington's manager and staff with the Public Works Department.

1.11. "Master Development Plan" means a plan by Lessee for development of the Land. Upon the expiration of the Due Diligence Period, Lessee shall provide a Master Development Plan for Development of the three (3) Phases of construction consistent with the requirements of the Due Diligence Period and the time frames as set forth in this Lease. It is understood by the Parties that the Master Development Plan for Development of the Land shall be approved by Village in accordance with Village's land use and development criteria and in accordance with all Village, county, district, and state criteria as are required for approval of the Master Development Plan. However, this is a conceptual plan, and the parties acknowledge that ultimate development may deviate from the initial proposed Master Development Plan and approval for any substantial deviations shall not be unreasonably withheld. The Master Development Plan shall allow the use by Lessee and the uses defined for Recreational Joint Use Facilities.

1.12. "Premises" shall mean the Land and the improvements.

1.13. "Rent" shall mean the sums payable to Lessor under this Lease for use of the Land ("Base Rent"), and any additional charges, which may be assessed by Lessor or payable by Lessee ("Additional Rent") pursuant to the terms of this Lease.

1.14. "Recreational Joint Use Facilities" shall be defined as set forth on Exhibit "B" with the concepts including three (3) multi-purpose fields, and one (1) restroom/concession building with all such Facilities to be jointly used between Lessor and Lessee in accordance with the Recreational Joint Use Facilities Usage Agreement. This Usage is more clearly set forth on Exhibit "C" which defines the priorities use, liabilities and terms of the Joint Usage of the Recreational Joint Use Facilities.

1.15. Singular, Plural, Gender. Whenever the context so permits, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

1.16. Triple Net Lease. A lease wherein Lessee shall pay rent, taxes, insurance, maintenance and all other expenses for which Lessee is obligated to pay associated with the Premises.

1.17. "Use by Lessee". The use by Lessee shall be that use defined in Paragraph 5.1.

1.18. "Village of Wellington" (Village). The Village of Wellington was established by Charter and incorporated in 1995 whereafter, Acme Improvement District became a Dependent District of the Village of Wellington in 1996 and the special acts of Acme Improvement District were to become the ordinances of the Village of Wellington with all assets, liabilities, and contracts of Acme Improvements District remaining unaffected and remain in full force and effect. The Village has the authority to approve the Master Development Plan due to the fact that it has jurisdiction for land use development within the Village. Said jurisdiction is not exclusive as approvals from other agencies are required for land use development.

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1.19. Effect of Definitions. The definitions provided in this Section 1 shall apply throughout this Lease and the Exhibits hereto, as the context requires, whether or not they are capitalized.

2. THE PREMISES.

Lessor hereby leases to Lessee, and Lessee hereby takes and leases from Lessor, upon and subject to all terms, conditions, covenants, and provisions contained herein, the Land and all rights, privileges, and easements benefiting or pertaining to the Land. Lessor hereby warrants unto Lessee that Lessor has good and marketable fee simple title in and to the Land and that entry into this Lease does not violate any statutes, ordinances, regulations, or the terms of any other agreement, contracts or financing that have been entered into by Lessor and the leasehold interest is hereby transferred by Lessor unto Lessee pursuant to the terms and conditions contained within this Lease, which shall include the following:

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2.1. Applicable building and zoning ordinances and all other restrictions and regulations imposed by governmental authorities having jurisdiction over the Land, Premises, and Improvements to be constructed thereon or which are located thereon, subject to state law, including the Department of Education, regulating state educational institutions, none of which shall preclude Lessee's use as defined herein.

2.2. All covenants, terms, provisions, conditions, reservations, restrictions, agreements, assignments, easements, and any other matters of record which affect the Land and Premises and the proposed improvements or improvements thereon, none of which shall preclude the Lessee's uses defined herein.

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2.3. Any and all matters which would be disclosed by an accurate survey and inspection of the Land, none of which shall interfere with a marketable leasehold title, development of the Premises, or the Lessee's uses defined herein.

2.4. All matters of record relating to the Land shall be in that certain owner's title insurance policy written on _____ along with hard copies of all exceptions.

2.5. Any and all other matters affecting the Land, whether recorded or not recorded, with all unrecorded matters, relating to the Land to be provided to Lessee within ten (10) days of the Effective Date.

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3. DUE DILIGENCE PERIOD.

Lessor and Lessee acknowledge that Lessee shall have a period of six (6) months from the Effective Date of this Lease (Initial Due Diligence Period) to exercise Due Diligence, at its cost, to inspect the Land and Premises and approve clear and marketable title to the property acceptable to Lessee in order to ensure that the intended use is permissible and financially feasible and that there are no impediments to this use and development. The leasehold policy shall be prepared by Gibson & Loggins, P.A., based upon Attorneys' Title Insurance Policy criteria. Such Due Diligence may include, but is not limited to, environmental studies, land use and zoning criteria, record title issues, and/or other studies, and including traffic studies, including traffic approvals sufficient to accommodate all of Lessee's development of the Premises on a Phased basis, and any permits or approvals that may be necessary for the intended use of the Premises by Lessee and a cost feasibility study for Lessee including traffic impact, costs, land planning and zoning criteria and costs, infrastructure costs, and the feasibility of compliance with land use requirements. Lessor agrees to cooperate and allow access to the Land and Premises to Lessee during the Due Diligence Period. Lessor shall provide Lessee all information relative to the

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property which the Lessor has in its possession, such as, but not limited to, surveys, title evidence, reports, and copies of all title exceptions, and any other items as reasonably requested by Lessee within ten (10) days of the Effective Date. After the Effective Date, Lessee has the right to enter into the Land and Premises to make determinations or inspections as deemed necessary by Lessee. Lessee agrees to pay for all costs and damages that may be incurred due to the inspections performed on the behalf of Lessee during the Due Diligence Period and to provide to Lessor a copy of any reports or other findings made during Lessee's due diligence inspections. In the event Lessee, in its sole discretion, for any reason finds the Land or Premises are not satisfactory or cost effective for its intended use, the Lessee shall provide written notice prior to the expiration of the Due Diligence Period of termination of this Lease wherein this Lease Agreement shall be cancelled and terminated and all obligations between all parties are deemed null and void and of no further force and effect. The Due Diligence Period may be extended at the request of Lessee for a period of six (6) additional months (Additional Due Diligence Period) after the expiration of the Initial Due Diligence Period in the event, further studies or approvals are required including, but not limited to, State or DRI approvals, environmental assessments, zoning, land use modification, variances or exceptions, survey and title information, or traffic analysis as are required. In the event that environmental remediation is required, Lessor shall have the obligation to remediate for any conditions that pre-exist the Effective Date of this Lease and Lessee shall have no liability regarding the presence of environmental hazardous substances during the Due Diligence Period. Lessee shall use its best efforts to obtain studies and approvals during the Initial Due Diligence Period including traffic concurrency to the Land of a number which is sufficient to accommodate all of Lessee's contemplated development of the Premises on a phased basis. If the approvals have not been obtained at the expiration of the Additional Due Diligence Period, then either party may terminate this Lease by giving written notice of termination at which time the Lease shall be null and void and no further force and effect and obligations of all parties discontinue. Lessor shall fully cooperate in the requirements of any approvals during the Due Diligence Period.

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4. TERM.

The initial term of the Lease shall be for a period of fifty (50) years commencing after the expiration of the Due Diligence Period and/or approval by all appropriate parties and agencies of the Master Development Plan or issuance of the Development Order, whichever event is later. Provided Lessee is not in default hereunder, the Lease shall automatically extend for an additional fifty (50) years at the end of each five (5) year period commencing five (5) years after the Effective Date unless notice is given by either party of their intent to not extend the Lease in which case this the Lease will automatically convert to a fixed fifty (50) forty five (45) year Lease after each such five (5) year period and will expire at the end of said fifty (50) forty five (45) year period under the same terms and conditions set forth herein, unless modified by written agreement between the

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parties. Accordingly, if there is no default, the Lease shall never be less a fixed forty five (45) year term. The parties acknowledge that this is in consideration of financing for the improvements on the Land.

If Lessee has not received all appropriate approvals of its Master Development Plan, including the approval of Lessor and all appropriate agencies, on or before May 1, 2010, then either party may declare the Lease null and void, and upon such declaration, neither party shall have any further obligations to the other under the terms and conditions of this Lease. Lessee's use approval by all appropriate agencies shall be a condition precedent to Lessee's performance under the terms of this Lease.

Lessee hereby agrees that if it fails to surrender the Land and Premises at the end of the Lease term, as it may be extended herein, or upon any earlier termination of this Lease, Lessee shall be liable to Lessor for any and actual damages which Lessor may suffer by reason thereof, and Lessee shall indemnify Lessor against any and all claims and demands made by succeeding tenants against Lessor, founded upon delay by Lessor in delivering possession of the Land and/or Premises to such succeeding tenant.

5. LESSEE'S USE OF THE PREMISES

5.1. Use of the Premises. The Premises shall be used for the operation of a community college campus wherein students may obtain two (2) year degrees and four (4) year degrees, and graduate degrees, with the Lessee intending to primarily house the baccalaureate programs at the premises, and ancillary services such as, educational facilities, educational plants and auxiliary facilities as allowed by statute and as deemed necessary by Lessee, in accordance with the Master Development Plan and mission statement of the Lessee and it may also include additional ancillary uses consistent with the Development Order and Master Development Plan, and further may include recreational, civic, and community activities and joint uses as agreed upon by Lessor and Lessee. Lessee shall be entitled to provide ancillary uses customarily provided with centers for college campuses and to authorize the use of the Premises, with or without charge, to other parties provided that such use is for cultural educational, or student support purposes, is authorized by the Lessee, and the use criteria are subject to an agreement of terms with Lessee. Lessee shall cooperate with other institutions of higher education as a benefit for the students subject to appropriate Department of Education, regulatory requirements, and compatibility of Joint Uses of Facilities as established by Lessee. The Lessee shall comply with the Village of Wellington's Development Order so long as it is not inconsistent with state statutes or regulations or other mandated requirements, and other approvals which may be granted to Lessee as part of its development of the Land. Lessee shall not use the Land or Premises for any unlawful purpose or purposes. Lessee shall exercise sole control of all educational curriculum programs, functions, services and student ancillary and

auxiliary uses consistent with the Development Order and Master Development Plan on the Premises.

5.2. It is the intent of Lessee to continue the existing High School Programs to the extent they remain financially feasible and sufficient demand exists in the discretion of Lessee. Compliance with Laws. Lessee shall, throughout the term of this Lease, at Lessee's sole expense, promptly comply with all federal, state and local laws, rules, regulations, codes, and ordinances. Further, Lessee shall comply with all land use approval orders, and any insurance requirements as well as any and all matters as contained in this Lease that are not inconsistent with state statute and regulations, for a state educational institution.

6. CONSTRUCTION OF IMPROVEMENTS

6.1. In order to implement the uses contemplated by this Lease, it shall be necessary for the Lessee to make improvements to the leased site based upon Green certification standards with the level of standards to be determined by Lessee. These improvements may be phased in a manner as determined by the Lessee and is represented by the terms herein, depending on the financial ability and changing educational environment of the Lessee. Prior to instituting any such improvements and prior to submittal for formal approval of a Development Order on the site from the Village in its regulatory capacity, Lessee shall submit and have approved by Village, a Master Development Plan outlining the proposed improvements and the proposed phasing of such improvements, and describing the general location and the architectural style of the improvements. It is the intent of Lessor and Lessee that the phased construction will be as follows subject to any changes that may be required which would be agreed upon in writing between Lessee and Lessor. The phased construction schedule is based upon the later of two (2) years after approval by all appropriate agencies, including the Department of Education, or any comprehensive plan, amendments, or DRI or environmental approvals, or approval of the Master Development Plan, or issuance of the Development Order of the Effective Date of the Lease, assuming funding is available and there is no force majeure.

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- Construction of Phase I will commence within two (2) years of the issuance of the Development Order, above criteria and be completed within two (2) years of commencement of building.
- Construction of Phase II will commence within ten (10) years of the issuance of the Development Order, above criteria.
- If Phase I is not timely started commenced within two (2) years of the issuance of the Development Order above criteria, the entire leasehold reverts to the Village.

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- If Phase II is not timely started within ten (10) years of the issuance of the Development Order the above criteria, all lands beyond Phase II revert to the Village immediately Lessor.
- Construction of Phase III shall commence within twenty (20) years of the issuance of the Development Order above criteria. In the event that Phase III is not timely started, then the Phase III land shall revert to the Lessor.
- Failure to timely commence construction of Phases or to timely complete Phase I, shall be a cause for Lessor to terminate the Lease upon written notice to Lessee, provided that the notice of termination for failure to complete Phase I improvements in a timely fashion shall provide a minimum of twenty four (24) months for Lessee to cure the deficiency or failure.

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6.2. The general concept and intent upon execution of this Lease for the Phased Development is attached as Exhibit "D". It is agreed that the buildings and improvements to be erected on the Land by Lessee shall be deemed to be, and shall remain, personalty and the sole property of Lessee until such time as this Lease terminates, at which time the Premises shall automatically become part of the realty and become the property of Lessor, subject to any payments or pro-rations contained herein. The parties hereunto understand that the Lessee shall maintain the Premises in a reasonable condition together with reasonable wear and tear expected.

6.3. As a part of this Master Development Planning process Lessee shall obtain approval for traffic concurrency studies for all phases of the proposed improvements to be approved by Palm Beach County or any other governmental authority having jurisdiction over the same and applicable zoning and land use criteria.

6.4. Once the Due Diligence has been satisfactorily conducted and Lessor has approved the Master Development Plan, the development can proceed through the College's permitting process, and shall be constructed in accordance with the applicable building code and the Department of Education standards and as provided for in this Lease. If there is a material change to the Master Development Plan which impacts the permitting process, the Lessor shall have the right which shall not be unreasonably withheld, to approve such material change. Material change is defined as any change inconsistent with federal, state or local laws, rules, regulations, codes or ordinances or a significant design or density impact, but does not include a revision made in response to the Lessor.

6.5. Lessee, subject to the terms and conditions of this Agreement and so long as it is not in default hereunder and subject to the following conditions, shall have the right to cause the Improvements to be constructed upon the Land to be used for and in connection with the uses of the Land permitted by Lessee

under this Lease. Lessee shall have the right to construct buildings and improvements upon the Land to such extent and of such area as shall comply with all existing federal, state and local laws, rules, regulations, codes, and ordinances.

6.6. Once commenced, the Improvements shall ~~have be constructed in accordance with the plans and specifications approved by Lessor and constructed in accordance with the standards and specifications of the Florida Department of Education and all appropriate agencies. All work shall be done in a good, workmanlike manner.~~

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7. APPROVALS TO CONSTRUCT AND OPERATE IMPROVEMENTS;
TRAFFIC CONCURRENCY AND CONSTRUCTION OF IMPROVEMENTS.

7.1. Lessee shall be responsible for obtaining all construction funding and other funding necessary for the successful construction and day to day operations of said college campus, otherwise known as the Premises.

7.2. Lessee shall be responsible for obtaining all permits and approvals necessary for the construction and operation of said college campus, including, but not limited to, obtaining all governmental approvals, which shall consist of, but not limited to, traffic, zoning, building, obtaining approvals from any master association or sub-association having jurisdiction over the Land and/or Premises and/or the project, complying with all covenants, conditions, and restrictions affecting the Land and/or Premises and/or the project, and complying with any other matters of record, providing for all on site and off site improvements at its own costs.

7.3. Lessee shall obtain from all contracted firms performing construction work on each Phase on this property, payment and performance bonds protecting Lessor's and Lessee's interest in the Land and/or Premises and/or improvements, as the case may be, prior to the commencement of any phase of construction contemplated herein by Lessee. Such payment and performance bonds shall be delivered to Lessor no later than thirty (30) days after execution of the principal construction contract. The form of such bonds shall be in accordance with F.S. 255.05. Lessee shall not commence any construction until such time as the bonds are in place. Lessee shall be required to record such bonds of record as required by law.

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7.4. Prior to commencement of construction of the Improvements of the Land in total or in phases, Lessee shall furnish to Lessor a construction contract providing for the completion of the construction of the Improvements on the Land, including all off-site work in accordance with the ~~plans and Master Plan specifications, therefore, and Development Order, as approved in accordance~~ with this Lease Agreement.

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7.5. Upon the commencement of construction by Lessee of the Improvements on the Land and any agreed upon off-site Improvements, Lessee shall be required to have all Improvements, including required and agreed upon off-site Improvements fully and finally completed as provided in this Lease and the Master Development Plan. Proof of such completion of construction shall be evidenced by a certificate of occupancy issued by such governmental authorities having jurisdiction over the Land, project, and Premises and Improvements.

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7.6. Upon the completion of each Phase of the construction of the Improvements on the Land, Lessee, at its sole cost and expense, shall furnish to Lessor the following:

7.6.1. A certificate from the architect/engineer of record certifying that the construction has been completed substantially in accordance with the approved plans and specifications.

7.6.2. A final contractor's affidavit evidencing that all sub-contractors, materialmen and the contractor have been paid in full for the Construction of the Improvements on the Land and for all off-site Improvements. An Affidavit executed under penalty of perjury from the Lessee evidencing that all consultants and design professional and others associated with the project and construction have been paid in full.

7.6.3. A true copy of the permanent certificate of occupancy for the Premises issued by such governmental authorities having jurisdiction over the Land, Improvements and Premises.

7.6.4. A complete set of surveys and as-built plans showing the Improvements located on the Land.

7.6.5. A true copy of all other permits and certificates required from all governmental authorities for the operation of the Premises for Lessee's use of the Land and Premises.

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7.6.6. A complete set of contract documents, including the architect of records contract.

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7.6.7. A complete set of all warranties and guarantees.

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7.6.8. A complete set of all manuals for the equipment located on the Premises with manufacturer's information and a list of such equipment.

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7.6.9. A list of all major subcontractors who worked on the Improvements and Premises.

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7.6.10. Lessee shall have the right, from time to time, to expand, relocate, replace, remodel, or renovate the Improvements on the Land. Any such expansion, relocation, replacement, remodeling, or renovation shall be subject to (1) submitting for Lessor's review of Lessee's plans and specifications; (2) obtaining such approvals from such governmental authorities having jurisdiction over the same; (3) complying with all matters recorded of record affecting the Land, Premises, and/or Improvements; (4) obtaining Lessor's overall approval, which approval may not be unreasonably withheld; reasonable approval may be withheld if the action is inconsistent with the Master Development Plan; (5) agreement as to Lessor and Lessee as to the commencement and completion dates for the work, which shall be reasonable; (6) Lessee complying with all insurance requirements of Lessor and bonding requirements and any such other requirements Lessor may request of Lessee; (7) after commencement of construction, Lessee shall diligently proceed with such construction to completion in accordance with the construction schedule approved by Lessor and in accordance with all of Lessor's terms and conditions. The terms and conditions herein shall be applicable to all phases of the project.

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8. RENT.

8.1. Base Rent. Lessee covenants and agrees to pay to Lessor a base Rent (the "Base Rent"), which is the sum of Ten Dollars (\$10.00) per annum, payable commencing upon the expiration of Due Diligence or approval of the Master Development Plan, whichever is later, and continuing on the first business day of each and every year thereafter for the entire term of this Lease.

8.2. Additional Rent. As additional consideration Lessee shall design, develop, build, construct and maintain a recreational element (Recreational Joint Use Facilities) the preliminary concept of which includes three (3) multi-purpose fields and one (1) restroom/concession building as set forth on Exhibit "B". Lessee shall maintain the recreational elements as per Exhibit "C" and in accordance with Community College standard maintenance procedures, unless the standards are otherwise modified by written agreement of the parties and shall build, develop and construct and maintain Recreational Joint Use Facilities, said Facilities listed on Exhibit "B". Facilities and the access roads will be constructed within two (2) years of the issuance of the Development Order Phase J. The Usage of the Recreational Joint Use Facilities shall be controlled by the Recreational Joint Use Facilities Agreement (Exhibit "C"). Lessee shall maintain the Recreational Joint Use Agreement Facilities in accordance with Lessee's standard maintenance procedures unless the standards are otherwise modified by written agreement of the parties. Lessee's breach of obligation to timely complete the Recreational Joint Use Facilities shall be cause for Lessor to terminate the Lease, provided however that before the Lease is terminated for such cause, Lessor shall have given Lessee at least one hundred and eighty (180) days notice and an opportunity to cure the deficiency or failure.

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8.3. Place of Payment. Lessee shall pay all Rent to Lessor in lawful money of the United States of America, at Lessor's address as shown herein, or at such other address as Lessor shall designate from time to time in writing.

8.4. Platting. Lessee shall cause the Land to be platted in accordance with the Village's Land Development Regulations. As a part of the platting process Lessee shall identify the Village's reuse water storage, lake and drainage lake adjacent to any proposed development as well as access and maintenance easements surrounding those water bodies. During the term of the Lease Lessor shall be responsible for maintaining the reuse water storage lake and Lessee shall be responsible for maintaining the drainage lake adjacent to any proposed development along with all other drainage facilities constructed as a result of the Improvements built by Lessee.

8.5. Property Maintenance. Any undeveloped Land that abuts either an adjacent development or a roadway as set forth on a certain certified survey once the Master Development Plan has been approved, shall be cleared for a distance of at least sixty (60) feet from the adjacent property line or road right of way or easement and Land that has been cleared or otherwise altered from its natural condition shall be maintained in accordance with the Lessee's general maintenance procedures, or Master Development Plan approval criteria. Lessee shall maintain the buildings constructed on the Land in good condition and repair at all times, damage by ordinary wear and tear and casualties beyond its control excepted. Lessee shall promptly make any and all repairs to the buildings that may be necessary or desirable. Lessee shall be responsible for installation and maintenance of landscaping.

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9. TAXES AND UTILITY EXPENSES.

9.1. Lessee shall pay for the connection of utilities to the site in accordance with the plans and specifications for the Improvements. Lessee shall be solely responsible for any expenses pertaining to utilities on site. Lessee shall be responsible for any special or general assessments, intangible taxes, ad valorem taxes (if any), water charges, drainage fees, sewer charges, excise taxes, levies, license, and permit fees and any other charges that pertain to the Premises to the extent they are applicable by law to Lessee.

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9.2. Tax Contests. Lessee, or its designees, shall have the right to contest the amount of or validity of any such Taxes, Utility Expenses, assessments, or impositions by appropriate legal proceedings, diligently pursued, provided that (a) Lessee shall first make all contested payments, under protest if it desires; or (b) Lessee shall have furnished such security, if any, as may be required in the proceedings and as required by Lessor; and (c) neither the Land nor the Improvements, nor any part thereof, nor interest therein would be in any danger of being sold, forfeited, lost, or interfered with; and (d) all expenses incurred in connection with such proceedings shall be paid by Lessee.

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9.3. Utility Charges. Lessee, upon commencement of this Lease and Lessee's use of the Land shall pay or cause to be paid all charges for water, electricity, light, heat or power, telephone or other communication service(s) used, rendered or supplied upon or in connection with the Land and/or Premises and also any charges or expenses in connection with any alterations, additions, installations, or changes required or desired in connection with the supplying or using of such utilities or services or substitutes therefore throughout the term of this Lease, and to indemnify Lessor and save it harmless against any liability or damages on such account. Lessee shall be responsible to obtain all off-site and on-site improvements and services which are necessary for the development of the Land and Premises for Lessee's use of the Land and Premises as contemplated herein. Lessee shall, at its sole expense, procure any and all necessary permits, licenses, or other authorizations and approvals required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying all utility and other service to the Premises. Lessee shall, at Lessee's expense, obtain all necessary sewer and water and other utility services to the Land and Premises, including, but not limited to, surface water drainage and other such matters necessary for Lessee's intended use of the Land and Premises. Notwithstanding anything to the contrary contained in this Section 9.3, Lessor shall, at its sole cost and expense, bring all utilities required for Lessee's project to the property line of the Land as determined by Survey.

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10. REPAIRS AND MAINTENANCE OF THE PREMISES.

10.1. Repairs. Lessee shall, throughout the term of this Lease, at Lessee's sole expense, maintain the Premises, including, without limitation, the improvements, equipment, and fixtures situated therein, and the parking facilities situated therein, and all improvements contained within the Land in good order and condition. Lessee shall faithfully perform any and all obligations and duties required to be performed by Lessor under any and all easements and agreements of record affecting the Premises or Land or the property. Lessee shall promptly, at Lessee's own expense, make all necessary repairs, renewals, and replacements, interior and exterior, structural and nonstructural of, or to the Premises, including, but not limited to, roofs, foundations, and appurtenances thereto, all sidewalks, grounds, landscaping, lakes, parking facilities, plazas, areas, alleys, and curbs, water, sewer and gas connections, pipes and mains, all other fixtures, machinery, and equipment as contained within the property boundary lines of the Land or as otherwise directly utilized by the Lessee such as, but not limited to, its offsite improvements. All repairs or replacements shall be made in compliance with all applicable laws, rules, and regulations of such governmental and other authorities having jurisdiction over the Land and Premises. Nothing contained in this Lease shall impose on Lessor the obligation to make any repairs or expend any monies for the maintenance of the Premises.

10.2. **Premises Kept Clean.** Lessee shall keep and maintain all portions of the Premises and the sidewalks and other improvements in a clean and orderly condition, free of accumulations of dirt, rubbish, and debris.

10.3. **Removal of Dangerous Conditions.** Lessee shall during the term of this Lease, at Lessee's sole expense, do all things necessary to remove any dangerous condition from time to time existing on the Premises, including (without limiting the generality of the foregoing) promptly taking appropriate measures to prevent or repair any erosion, collapse, or other unstable condition on the Premises.

10.4. **Waste.** Lessee covenants not to do or suffer to be done any waste, damage, or injury to the Premises or any machinery, fixtures, or equipment situated thereon.

10.5. **Expiration of Lease Term.** Lessee, at its own expense, covenants and agrees to deliver to Lessor, upon the expiration of this Lease, the entire Premises, including all improvements constructed thereon, in good state of repair and in good useable condition, ordinary wear and tear expected, and free of the leasehold or other interest or lien of any other party therein.

11. CONSTRUCTION LIENS.

11.1. Lessee shall not suffer or permit any construction liens to be filed against Lessor's interest in the Premises nor against Lessee's interest in the Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or anyone other than Lessor having a right to or lawfully claiming to have a right to possession of the Premises or any part thereof as a result of an agreement with, or the assent of, Lessee. Nothing in this Lease shall be construed as constituting the consent of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, sub-subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Land or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against Lessor's interest in the Premises. Moreover, Lessee shall not be deemed to be the agent of Lessor, so as to confer upon any "Lienor" (as defined in the Florida Construction Lien Law, Florida Statutes, Chapter 713, as it may be amended from time to time) a construction lien upon Lessor's estate in the Land. If any such construction lien shall at any time be filed against Lessor's estate in the Land or any part thereof, Lessee shall immediately notify Lessor thereof and shall cause the same to be discharged of record or bonded or otherwise secured to the satisfaction of Lessor within twenty (20) days after the date Lessee has knowledge of such filing. If Lessee shall fail to discharge such construction lien within such period, then in addition to any other rights or remedies of Lessor and

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as provided in law and-or equity, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or bonding, and in any such event, Lessor shall be entitled, if Lessor so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the Lienor and to pay the amount of the judgment, if any, in favor of the Lienor with interest, costs, and allowances. However, Lessee shall not be required to pay or discharge any such construction lien so long as Lessee shall in good faith proceed to contest the same by appropriate proceedings; provided, however, that Lessee shall give notice in writing to Lessor of its intention to contest the validity of such lien and shall furnish cash or a surety bond of a company satisfactory to Lessor in an amount sufficient to pay such contested lien claim with all interest thereon and costs and expenses, including reasonable attorneys' fees as estimated by Lessor to be incurred in connection therewith.

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11.2. Lessor and Lessee recognize and acknowledge that Chapter 713 Construction Lien Law does not apply to construction of this educational facility.

11.3. Nothing contained herein in this Lease shall constitute a waiver of acceptance or acknowledgement that Chapter 713 Construction Lien Law applies to the construction of this educational facility. However, in the event of any improper filing of a lien, Lessee shall assume the responsibility of obtaining removal of the lien and Lessor shall fully cooperate in such event.

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12. INSPECTION.

Inspection by Lessor. Lessor or its agents shall have the right to enter the Premises, during usual business hours upon reasonable notice not less than fifteen (15) days prior written notice, and with the accompaniment of a designated representative of Lessee for the purpose of inspecting the same.

13. LESSOR AND LESSEE LIABILITY.

Lessor and Lessee acknowledge and agreed that each party has the protection of sovereign immunity as it may be amended from time to time by Florida Statute 768.28. Lessor and Lessee agree that neither shall waive nor fail to assert sovereign immunity, to the extent allowable at law, in any matter for which Lessor or Lessee would otherwise be entitled to assert such defense.

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14. DEFAULT PROVISIONS.

Events of Default. In the event of default beyond any contractual extension or grace period by Lessor or Lessee which is a failure to perform in accordance with the terms of this Lease, the Lessor or Lessee can terminate the Lease and seek damages or seek specific performance and each shall have available all remedies as are according to law and-or equity and-or as provided for in this Lease. Except as otherwise set forth herein, if there is an event of default, each party shall give to the defaulting party a notice of default with an

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opportunity of sixty (60) days to cure or as reasonably extended to allow cure period required by circumstances and, in the event of failure to cure, the party not in default can provide a notice of termination of the Lease and seek such damages as are available in equity or at law ~~and or as provided in this Lease.~~

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15. REMEDIES.

15.1. Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to either party herein or at law or in equity or by statute shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to either party may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the party exercising such remedy. No delay or omission of either party to exercise any right or power arising from any default by the other party shall impair any such right or power, nor shall it be construed to be a waiver of any such default or any acquiescence therein.

15.2. Non-Waiver. The failure of a party to insist upon the strict performance of any of the covenants, conditions, or agreements of this Lease in any one or more instances shall not be construed as a waiver or relinquishment in the future of such party's right to enforce any such covenants, conditions, and agreements. No delay or omission by a party in the exercise of any rights or powers arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or acquiescence therein.

16. ASSIGNMENT AND SUBLEASES.

16.1. Conditions of Assignments. Lessee shall not assign this Lease without the prior written consent of Lessor, which consent may not be unreasonably withheld. The consent by Lessor to any assignment shall not constitute a waiver of the necessity for such consent for any subsequent assignment. Lessor and Lessee acknowledge that Lessee may sublease the Property for purposes as determined by Lessee in its sole discretion necessary for the implementation of operating the college campus or operation of Lessee and ancillary services required for ~~their or their~~ students support. Any such subleases would be subject to the terms of this Lease.

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16.2. Certificates. Lessor shall, from time to time, within thirty (30) days after written request by any permitted mortgagee of the Premises, certify in writing to such party:

16.3. That this Lease is in full force and effect in accordance with the provisions herein set forth and unmodified, or if modified, stating all modifications thereto.

16.4 The Lease has not been assigned, there are no liens, encumbrances, assignments or sales of the Property that is subject to this Lease as of the date of the Lease.

16.5. Such other matters as may be reasonably requested by Lessee.

17. SALE AND FEE MORTGAGES.

Certificates. Lessee shall, from time to time, at reasonable intervals, within thirty (30) days after written request by Lessor or by any prospective purchaser of the Premises, any prospective fee mortgagee, or any other party, certify in writing to such party:

(a) This Lease is in full force and effect in accordance with the provisions herein set forth and unmodified or, if modified, stating all modifications thereto.

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(b) The date to which Rent, Taxes, and Utility Expenses for the Premises have been paid.

(c) Whether or not, to Lessee's knowledge, Lessor is in default in any respect hereunder and, if so, specify each such default of which Lessee has knowledge.

(d) The commencement and expiration dates of this Lease.

(e) Any other matters as may be reasonably requested by such party referenced above.

18. SALE OF THE FEE SIMPLE ESTATE.

18.1. Lessor Right of Sale. There shall be no sale or assignment or transfer of Lessor's interest in the Land or the terms of the Lease for the duration of this Lease without the express written consent of Lessee and under such terms and conditions as Lessee requires, particularly in light of the fact that these Improvements are constituted in part or in whole by public funds.

18.2. Lessee reserves the right to terminate the Lease in the event that the Land is deemed surplus property in accordance with statute and regulatory procedures in which event the Land the Improvements would revert to Lessor.

19. LEASEHOLD MORTGAGES.

Mortgages Permitted. Lessor and Lessee recognize that State PECO funds or bond financing, state financing, or private financing may be utilized to construct the Improvements of the Leasehold Improvements on the Land. Performance by Lessee is subject to the financing of each Phase of the Project for the construction of the Leasehold Improvements and their maintenance, or

remodeling, renovation, or reconstruction after casualty. Lessee may mortgage, pledge, or encumber the leasehold interest and personal property and improvements of Lessee, but not the fee interest of Lessor without the prior written consent of Lessor, which will not be unreasonably withheld. Any financing of the Land or Premises shall disclose the Lessor's fee simple interest in the Land and if required for financing, Lessor shall subordinate its fee simple interest for the duration of any such financing and shall execute and provide any documentation as may be requested or required by Lessee or any financing party during the term including modifications, extensions, and amendments as may be required from time to time. Failure to comply shall be a default of Lessor.

20. INSURANCE.

20.1. Insurance upon the Land and Improvements shall be obtained by Lessee for the duration of this Lease and the amounts established in accordance with the terms and conditions of insurance as provided through the Florida Community College Risk Management Consortium and shall name Lessor as co-insured or a certificate holder in accordance with insurance requirements. As to the Improvements the insurance shall cover at a minimum the Improvement replacement value. The claims process shall be as established under the insurance provider.

20.2. No construction of Improvements shall be commenced until Lessee has delivered to Lessor the original proof of required insurance information.

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20.3. All insurance required above shall also provide for such Financial Institutional Securities interests should there be a mortgage on the leasehold estate.

21. DESTRUCTION.

In the event of destruction of the Improvements or any portion thereof for which insurance funds shall be payable and as often as such insurance funds shall have been paid to Lessee, the Lessee will use the funds to fix the damaged Improvement/building to the extent feasible as determined jointly by the Lessee and the Lessor. Any repair or Improvements shall be consistent with applicable State Department of Education Code requirements and consistent with the terms of this Lease.

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22. CONDEMNATION.

In the event that the Premises, or any part thereof, shall be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain or private purchase thereof, the parties hereto agree that the following provisions shall apply:

(a) Lessor shall receive that part of any award or compensation which is paid as a result of any such taking which is attributable to the value of

Lessor's fee interest in the Premises, together with its reversionary interest, any severance damages, and other damages as shall be determined by any court or courts of competent jurisdiction.

(b) Lessee shall receive any portion of an award or compensation which is attributable to the value of its Leasehold Estate. Lessee shall also be entitled to all portions of such award which are attributable to any Improvements placed upon the Land (less Lessor's reversionary interest in the Premises, which is the sole property of Lessor) by said Lessee, as determined by any court or courts of competent jurisdiction.

(c) If all or so much of the Premises be taken so that the remainder of the Premises is not usable by Lessee pursuant to the terms and provisions of this Lease, then, and in that event, this Lease shall thereupon be terminated as between Lessor and Lessee, and any award or compensation received for the entire taking of the Premises, including Improvements thereon, shall be divided between the parties hereto, as provided hereinabove.

23. NOTICES.

All notices and other communication between the parties hereto, which are permitted or required by the provisions of this Lease, shall be sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses shown below. The effective date of all notices or communications shall be the date of receipt, as shown on the return receipt, or the date upon which delivery is refused, as shown on the return receipt, or as certified by the postal authority.

If to Lessor:

Acme Improvement District, a Dependent
Special District of the Village of Wellington
1400 Greenbriar Boulevard
Wellington, Florida 33414-7699
Attn: Village Manager

With a copy to:

Jeffrey S. Kurtz, Village Attorney
Northpoint Corporate Center
701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407

If to Lessee:

The District Board of Trustees of
Palm Beach Community College
4200 Congress Avenue
Lake Worth, Florida 33461

Attn: _____

With a copy to:

Gibson & Loggins, P.A.
319 Clematis Street, Suite 800
West Palm Beach, Florida 33401
Attn: Kathleen J. Loggins, Esq.

24. AMENDMENT TO LEASE.

The provisions of this Lease may not be amended, supplemented, waived, or changed orally, but only by written instrument duly executed by Lessor and Lessee.

25. RELATIONSHIP OF THE PARTIES.

The parties hereby agree that it is their intention to create only the relationship of landlord and tenant, and neither this Lease nor any term, provision, payment, or right hereunder shall in any way or for any purpose constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint venturer or a member of a joint enterprise with Lessee, nor shall this Lease nor any term or payment required herein confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business. Further, Lessee shall not be deemed an agent or representative of ~~the Village of Wellington~~/Lessor for any purposes or in any manner whatsoever.

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26. LEASE FOR BENEFIT OF PARTIES HERETO.

Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than Lessor, Lessee, or their officers, directors, or incorporators, any right, remedy, or claim under or by reason of this Lease or any covenant, condition, or stipulation thereof; and the covenants, stipulations, or agreements contained in this Lease are and shall be for the sole and exclusive benefit of the aforementioned parties and their permitted successors and assigns.

27. RECORDING OF MEMORANDUM OF LEASE.

A memorandum of this Lease, in proper form for recordation, setting forth the existence and principal terms of this Lease, shall be recorded in the public records of Palm Beach County, Florida, and each party will join in the execution of such a memorandum and will take such further action as may be necessary to effect such recordation. Lessee shall pay for the recording of such memorandum and subsequent notice of termination.

28. QUIET ENJOYMENT.

Lessor agrees that Lessee, upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, shall (subject to Lessor's rights specified in this Lease) lawfully and quietly occupy the Premises during the term of this Lease as against Lessor or any persons claiming under Lessor. Lessor and Lessee agree that Lessee shall be entitled to the right of continued possession upon attornment in the event of any transfer or assignment by Lessor (which requires the consent of Lessee) allowing Lessee to remain in peaceful possession of the Land as long as it meets all of the terms and conditions of the Lease.

29. NOTICE OF COMPLAINTS OR SUITS.

Each party shall promptly notify the other of any Complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Lease. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

30. UNDERSTANDINGS AND AGREEMENTS.

All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Agreement.

31. SEVERABILITY.

If any of the provisions of this Lease, or any article, section, clause, phrase, word, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Lease, and of the application of any such provision, action, sentence, clause, phrase, or word, in other circumstances, shall not be affected thereby.

32. NO MERGER.

There shall be no merger of this Lease nor of the Leasehold Estate created hereby with the fee simple estate in the Land or the reversionary interest in the Premises or any part thereof by reason of the fact that the same person, firm, or entity may acquire or own or hold, directly or indirectly, (a) this Lease or the Leasehold Estate, created hereby or any interest in this Lease or in such Leasehold Estate and (b) the fee estate in the Land or any part thereof or any interest in such fee estate, or in the reversionary interest in the Premises, and no such merger shall occur unless and until Lessor, Lessee, and the holders of all

fee mortgages, if any, encumbering the fee interest in the Land, and the holders of all leasehold mortgages, if any, encumbering this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

33. CAPTIONS.

The captions used in this Lease and exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

34. GOVERNING LAW AND VENUE.

This Lease shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in Palm Beach County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

35. TIME OF THE ESSENCE.

Time shall be of the essence with respect to each provision herein which requires performance by either party upon a specified date or within a specified time period.

36. DRAFTER THEORY.

This Lease shall not be construed against the party who drafted the same as all parties to this Lease have consulted legal and business experts of their choosing to review the adequacy of the same.

37. CONSENTS AND APPROVALS.

All consents and approvals which may be given under this Lease will, as a condition of their effectiveness, be in writing. The granting of any consent or approval by Lessor or Lessee to perform any act requiring Lessor's or Lessee's consent or approval under the terms of this Lease, or the failure on the part of Lessor or Lessee to object to any such action taken shall not be deemed a waiver of the right to require such consent or approval for any further similar act by Lessor or the Lessee, and each party hereby expressly covenants and warrants that as to all matters requiring approval or consent under the terms of this Lease to secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver of the requirement to secure such consent or approval.

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38. MISCELLANEOUS.

38.1. Except as otherwise expressly provided in this Lease, there will be no merger of this Lease of the Leasehold Estate created hereby with the fee estate, or any part thereon by reason of the same person or entity acquiring or holding, directly or indirectly, this Lease of the Leasehold Estate created hereby or any interest in this Lease or in such Leasehold Estate as well as the fee estate.

38.2. This Agreement is binding upon the parties hereto, their heirs, successors, and assigns.

38.3. Should any litigation be brought in connection with this Lease, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

38.4. Nothing contained in this Lease shall:

(a) Operate as a waiver of any right or authority of Lessor or Lessee under any applicable statute, law, ordinance, regulation or charter, or bind or require Lessor or Lessee to act in any manner in connection with any regulatory requirement or action mandated by statute or law and each party shall be free to exercise all statutory regulatory powers.

39. No member, official, representative, or employee of the Village of Wellington/Lessor shall be personally liable to Lessee of any successor in interest, in the event of any default or breach by the Village of Wellington/Lessor or for any amount which may become due to Lessee, or its successors, and/or assigns or on any obligations under the terms of this Lease.

40. Nothing in this Lease shall be construed so as to confer upon any other party the rights of a third-party beneficiary.

41. INDEMNIFICATION.

~~Lessor and Lessee shall each hereby agree to indemnify and save hold harmless each other's agents, employees, officers, and Board members for liability, from and against any and all losses, claims, demands, matters, costs, suits, damages, judgments, and expenses of whatsoever kind or nature, including attorney's fees arising during the term of this Lease, for limited to any personal injury, loss of life, or damage to property sustained by any person, firm, corporation, or other entity, in or about the Premises, including, without limitation, parking areas, and adjacent sidewalks or streets or arising from any act of negligence, gross negligence, or wanton acts of either party or any of their agents, contractors, servants, employees, licensees, or invitees, arising out of each party's respective uses of the Property, and Lessor and Lessee shall each assist the other in the defense of any action.~~

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In the event of a challenge of Lessor's authority to enter into this Lease, Lessor shall defend any such action subject to terms acceptable to the Lessee and Lessee's title insurer. Lessee shall assist and cooperate with Lessor in any such action and including contributions to the defense to the extent allocation or budgeted funds are available and consistent with the lawful expenditure of such funds by Lessee.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

ATTEST:

LESSOR:

ACME IMPROVEMENT DISTRICT, a
Dependent Special District of the
VILLAGE OF WELLINGTON, a
Florida municipal corporation

By: _____
Awilda Rodriguez, Board Secretary

By: _____
Darell Bowen, President

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Dated: _____

By: _____
Jeffrey S. Kurtz, Board Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared _____, who produced as identification a _____ Driver's License, showing him to be the person described in and who executed the foregoing instrument as President of the Board of Supervisors of the ACME IMPROVEMENT DISTRICT, a Dependent Special District of the VILLAGE OF WELLINGTON, a Florida municipal corporation, and did acknowledge before me that he executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public

State
of _____

My commission expires: _____

LESSEE:

THE DISTRICT BOARD OF
TRUSTEES OF PALM BEACH
COMMUNITY COLLEGE, a
political subdivision of the state of
Florida

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

By: _____

Name: _____

Title: _____

Dated: _____

By: _____

Name: _____

Title: _____

Dated: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared _____, who produced as identification a _____ Driver's License, showing him to be the person described in and who executed the foregoing instrument as _____ of PALM BEACH COMMUNITY COLLEGE, a DISTRICT BOARD OF TRUSTEES OF PALM BEACH COMMUNITY COLLEGE, a political subdivision of the State of Florida and did acknowledge before me that he executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public

State
of _____

My commission expires: _____

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BOOK 15833 PAGE 4212
Dorothy M. Wilken, Clerk

Exhibit A

Legal Description to be verified and certified by Survey acceptable to Lessee

Tracts 1 through 8, Block 26, of Palm Beach Farms Co. Plat No. 3, recorded in Plat Book 2, Page 45, Public Records of Palm Beach County, Florida.

LESS AND EXCEPT,

1. The South 86 feet of said Tracts 5 through 8 and
2. The right of way for US 441. (State Road 17).
3. ~~The acres more or less donated to the New Community Church of the Palm Beaches as recorded in Official Records Book 10931 Page 489 and 492~~

Add 4 acres of PBF Co. roadway north of Tracts 1 to 4 and west of Tracts 4 and 5 all in Block 26 ORB 13325/1198. Less the South 86 feet

ALSO BEING DESCRIBED AS FOLLOWS: (This description authored in the office of Dennis J. Leavy & Associates, Inc.)

A parcel of land lying in Section 24, Township 44 South, Range 41 East, being a portion of Tracts 1 through 8 inclusive, Block 26, Palm Beach Farms Co. Plat No. 3, as recorded in Plat Book 2, Page 45, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the North One-Quarter (1/4) Corner of said Section 24, thence S.01°24'43"W., as a basis of bearings, along the West line of the Northeast One-Quarter of said Section 24, said line also being the West line of Block 26, Palm Beach Farms Co. Plat No. 3, a distance of 19.87 feet to the POINT OF BEGINNING; thence S.86°10'28"E., a distance of 1718.01 feet; thence S.86°54'06"E., a distance of 315.08 feet; thence S.88°10'28"E., a distance of 330.50 feet; thence S.43°08'16"E., a distance of 57.12 feet to a point on the westerly Right-of-Way Line of State Road 17 and U.S. Highway 441, as shown on the Florida Department of Transportation Right-of-Way Map, Section 93210-2519, sheet 9 of 27, revision date 02-01-86, the preceding four (4) courses also being coincident with the North line of these lands described in Official Record Book 13325, Page 1198 of the Public Records of Palm Beach County, Florida; thence S.01°24'43"W., along said Right-of-Way Line, a distance of 949.58 feet; thence N.88°52'02"W., departing said West Right-of-Way Line, a distance of 1142.41 feet; thence S.01°24'43"E., a distance of 415.00 feet to a point on a line 86.00 feet north of and parallel with (as measured at right angles) the South line of said Tracts 5 and 8, the preceding two (2) courses also being coincident with the North and West line of these lands described in Official Record Book 10931, Page 489 and 492 of the Public Records of Palm Beach County, Florida; thence S.88°52'02"W., along said parallel line, a distance of 1270.71 feet to a point on the aforementioned West line of the Northeast One-Quarter (1/4) of Section 24 and the West line of said Block 26, Palm Beach Farms Co. Plat No. 3; said line also being coincident with the West line of these lands described in Official Record Book 13325, Page 1198 of the Public Records of Palm Beach County, Florida; thence N.01°24'43"E., along said West line, a distance of 1475.51 feet to the Point of Beginning.

Said lands situate, lying and being in Palm Beach County, Florida.

and:

Tract C of Oakmont Estates P.U.D. (Public Recreation / Civil Site)
according to the plat as recorded in Plat Book 106 Pages 2 through 9
inclusive of Public Records of Palm Beach County, Florida.

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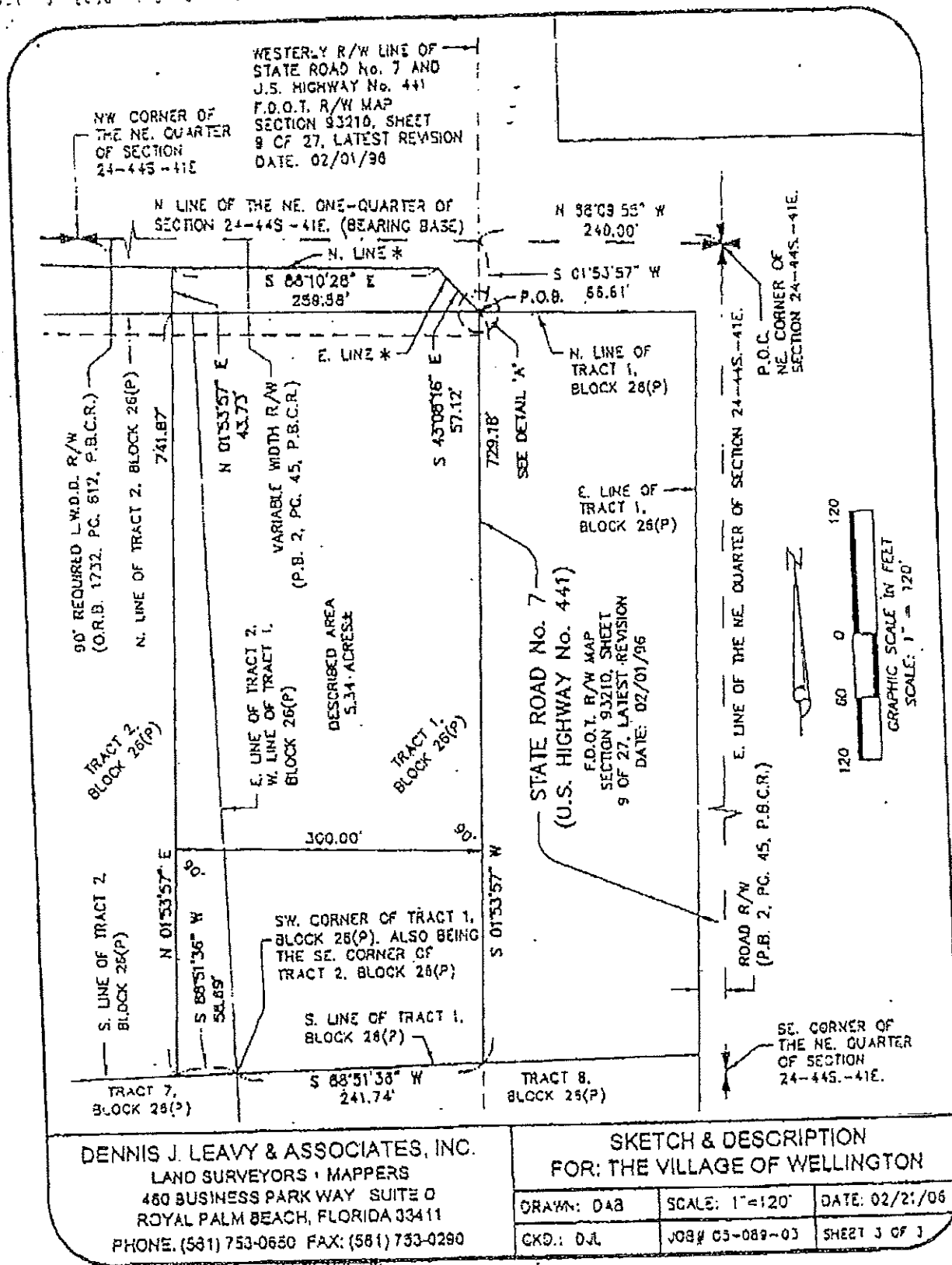


EXHIBIT B

RECREATIONAL JOINT USE FACILITIES

Three multi-purpose fields (360 Feet x 225 feet each)

Four three-wall racquet ball courts

One restroom/concession building (Village Park Standards)

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Lessee shall provide access roads to the Facilities

All to be completed on or before two (2) years from date of approval of the Master Development Plan and as approved by Lessor under the Master Development Plan, subject within Phase I to the Useage Agreement attached as Exhibit "C" and to be located on a Survey sketch.

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Subject to

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EXHIBIT C

RECREATIONAL JOINT USE FACILITIES USAGE AGREEMENT

The Lessee shall have priority use, unless agreed otherwise, of the recreational facilities as defined on Exhibit "B" to the Lease, between the hours of 7am and 5 pm, Monday through Friday of each week. The Lessor shall have priority use of the recreational facilities between the hours of 5pm and 11pm Monday through Friday and 7am through 11pm on Saturdays, Sundays and college recognized holidays. The facilities shall be closed from 11pm in the evening until 7am of the following morning unless, the Lessee and Lessor specifically authorize in writing that the facility can be open at that time. Either party upon written request and with the permission of the other party, subject to the provisions below, may use the facilities during the other party's priority usage.

No uses except those provided on Exhibit "B" shall be allowed for Lessor without the express consent of Lessee.

For any period in which Lessee utilizes the recreational facilities, Lessee shall provide security, liability insurance, parking, cleanup and maintenance, and concession provisions, utility costs, and coordination of any third party access.

For any period in which Lessor utilizes the recreational facilities, Lessor shall provide security, liability insurance, parking, cleanup and maintenance, and concession provisions, utility costs, and coordination of any third party access.

Lessor shall provide notice to Lessee of any event to be scheduled for Lessor including the identity of the parties and the dates and times of the event within fifteen (15) days in advance of the event.

If the Lessor agrees with any other party to utilize Lessor's interest in the joint use of the Land, Lessor shall provide notice to Lessee and obtain Lessee's written consent and any other use to be subject to terms acceptable to Lessee.

Maintenance shall be as follows:

Fertilizing: 6-8 times per year, 15-2-15 or as needed based on soil analysis, 300lbs/acre. 2 applications/per year, a pre-emergent herbicide applied separately.

Mowing: A minimum of 2 times per week, contingent of growing conditions, alternate mowing directions.

Lining: Weekly paint application, by the party requiring such, to the field lines to keep them bright and crisp. Stencils for football field numbers by the party requiring such, are use every two weeks.

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Over seeding: 1 time per year winter over seeding with perennial rye grass allowing fields to site idle for at least 3 days after application.

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EXHIBIT "D"

Palm Beach Community College

Wellington Campus-Phasing Plan

This campus will include the construction of the same types of education, auxiliary and ancillary buildings typically found on the other campuses of the College. Building types include classroom/ laboratories buildings, library, theater and humanities buildings, science building, student activity center and student and support services buildings, cafeteria and bookstore facilities, as well as administrative areas.

In addition to the actual building constructed on site there will be a need to construct required on-site utilities, roads and parking areas, recreation fields and drainage improvements, links to public transportation systems and landscaping and buffers.

The construction of these improvements is intended to be phased as follows:

Phase One: (3) recreational fields, restroom/concession building, approximately 36,000 GSF classroom/office building, associated roads, utilities, landscaping, and sufficient parking to serve these elements. Construction of this phase will commence within two years of the issuance of the Development Order.

Phase 2: approximately 120,000 GSF of classroom/office building, student and support services buildings, associated roads, utilities, landscaping, and sufficient parking to serve these elements. Construction of this phase will commence within two years of the issuance of the Development Order.

Phase 3: approximately 400,000 GSF of classroom/office building, theater, student and support services buildings associated roads, utilities, landscaping, and sufficient parking to serve these elements. Construction of this phase will commence within 16 years of the issuance of the Development Order.

The scope of the Improvements may change prior to actual construction based upon student needs and demands, technology changes, availability of funding, state directives and the Lessee's mission statement.

ExhibitD\pbc\wellington\exhibits\exhibit.d

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